

Supreme Court of the United States

OCTOBER TERM, 1970

No. 323

EDWARD H. COOLIDGE, JR.,

Petitioner,

vs.

THE STATE OF NEW HAMPSHIRE,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF NEW HAMPSHIRE

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the first part of the reign of King Henry the Fourth, from the year 1399 to the year 1405, in which year he died.

The second part of the reign of King Henry the Fourth, from the year 1405 to the year 1413, in which year he died.

The third part of the reign of King Henry the Fourth, from the year 1413 to the year 1417, in which year he died.

The fourth part of the reign of King Henry the Fourth, from the year 1417 to the year 1422, in which year he died.

The fifth part of the reign of King Henry the Fourth, from the year 1422 to the year 1425, in which year he died.

The sixth part of the reign of King Henry the Fourth, from the year 1425 to the year 1426, in which year he died.

CHRONOLOGICAL LIST OF IMPORTANT
DOCKET ENTRIES

1. Defendant Arrested February 19, 1964, and Manchester Municipal Court orders Probable Cause Hearing for March 4, 1964
2. Copy of First Decree Murder Indictment #3136
Dated: February 26, 1964
Entered: February 26, 1964
3. Copy of Felony (Kidnap) Murder Indictment #3137
Dated: February 26, 1964
Entered: February 26, 1964
4. Petition to Quash Search Warrants and Return Items Obtained without Search Warrants
Dated: July 22, 1964
Entered: July 23, 1964
5. Hearings on Petition to Quash in Hillsborough County Superior Court August 31 and September 1, 1964
6. Tentative Findings by the Court on Defendant's Petition to Quash Search Warrants, to Release Items of Property Seized, etc.
Entered: September 1, 1964
7. Composite of Findings by the Court on Defendant's Petition to Quash Search Warrants, to Release Items of Property Seized, etc.
Entered: October 13, 1964
8. Reserved Case is Filed with Hillsborough County Superior Court and Transferred to the New Hampshire Supreme Court without Rulings of Law. November 13, 1964
9. Opinion and Judgment of the New Hampshire Supreme Court March 11, 1965, at 106 N.H. 186, and Motion for Re-hearing denied, April 13, 1965
10. Trial Commences, Hillsborough County Superior Court, May 17, 1965

11. Verdicts of Guilty Returned June 22, 1965
12. Defendant's Post Trial Motions Denied. August 23, 1965, and September 2, 1965
13. Reserved Case is filed with Hillsborough County Superior Court September 30, 1965, and Transferred to the New Hampshire Supreme Court on October 6, 1965
14. Opinion and Judgment of the New Hampshire Supreme Court. June 30, 1969, at 109 N.H. 403
15. Defendant's Motion for Re-hearing
Dated: July 8, 1969
Entered: July 9, 1969
16. Motion for Re-hearing Denied and Opinion Modified. July 30, 1969
17. Application for Extension of Time in which to File Petition for a Writ of Certiorari
Dated: October 9, 1969
Entered: October 10, 1969
18. Extension of Time Granted on October 10, 1969, to and including November 26, 1969

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS

APRIL TERM 1965

No. 3136

No. 3137

THE STATE OF NEW HAMPSHIRE

v

EDWARD H. COOLIDGE, JR.

INDICTMENT #3136

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath present that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, aforesaid, on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester in the County of Hillsborough, and State of New Hampshire, aforesaid, with force and arms feloniously, wilfully and of his deliberate and premeditated malice aforethought did kill and murder Pamela Mason in that he did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg 22-caliber rifle, Palomino model 400 S-L-Lr, and did discharge said rifle twice causing the projectiles from the cartridges therein to strike and wound said Pamela Mason in the head, and the said Edward H. Coolidge, Jr. did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason died, contrary to the form of the statute in such case

made and provided, and against the peace and dignity of the State.

INDICTMENT #3137

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath present that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, aforesaid, on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester in the County of Hillsborough, and State of New Hampshire, aforesaid, with force and arms did feloniously and unlawfully seize, abduct, detain, conceal, take, lead, inveigle or carry away the person of Pamela Mason, a minor child of the age of fourteen (14) years, with the intent thereby to keep or conceal her from her parents, guardian, or legal custodian and in the course of perpetrating and committing said acts did feloniously, wilfully and of his deliberate and premeditated malice aforethought did kill and murder Pamela Mason in that he did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg 22-caliber rifle, Palomino model 400 S-L-Lr, and did discharge said rifle twice causing the projectiles from the cartridges therein to strike and wound said Pamela Mason in the head, and the said Edward H. Coolidge, Jr. did further make an assault upon the Person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason died, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

PETITION TO QUASH SEARCH WARRANTS, ETC.—

Filed July 23, 1964

NOW COME J. Murray Devine, Matthias J. Reynolds and John A. Graf, counsel for Edward H. Coolidge, Jr., and represent:

1. That prosecuting authorities have, in the name of the State, seized items of personal property of the defendant; that said items of personal property were taken from the person of the defendant, from the home of the defendant and from the motor vehicle of the defendant; that said items were searched for and seized without a search warrant; that said items are now in the possession of prosecuting authorities; and that said items were illegally seized in deprivation of the constitutional rights of the defendant.

WHEREFORE, your petitioners pray that all items of personal property of the defendant seized and retained as aforesaid be released to your petitioners forthwith; that all items of personal property of the defendant seized and retained as aforesaid be suppressed and quashed; that any and all evidence and information produced from, by or as a result of the items of personal property seized and retained as aforesaid be suppressed and quashed; and for such other and further relief as may be just.

2. That on February 19, 1964, four (4) search warrants, #7298A-D, were issued by a Justice of the Peace; that on February 20, 1964, items of property were seized pursuant thereto; that said items seized are now in the possession of prosecuting authorities; and that said four (4) search warrants, as enumerated above, were illegally issued and unlawfully obtained in deprivation of the constitutional rights of the defendant.

WHEREFORE, your petitioners pray that said four (4) search warrants, as enumerated above, be quashed; that all items of property seized pursuant to said four

(4) search warrants be released to your petitioners forthwith; that all items of property seized pursuant to said four (4) search warrants be suppressed and quashed; that any and all evidence and information produced from, by or as a result of the items of property seized pursuant to said four (4) search warrants be suppressed and quashed; and for such other and further relief as may be just.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.

APRIL TERM, 1964

State 3136

STATE

vs

EDWARD H. COOLIDGE, JR.

State 3137

STATE

vs

EDWARD H. COOLIDGE, JR.

State 3159

STATE

vs

EDWARD H. COOLIDGE, JR.

Hearing at Manchester in said County on the 31st day of August and 1st day of September, 1964, on petition to quash search warrants, to release items of property seized, et cetera (in 3136 and 3137), before Hon. Robert F. Griffith, Presiding Justice.

APPEARANCES:

For the State,

William Maynard, Attorney General
Alexander Kalinski, Asst. Attorney General
Emile R. Bussiere, Hillsborough County Atty.

For the Respondent,

J. Murray Devine, Esq.
Matthias J. Reynolds, Esq.
John A. Graf, Esq.

Stenographer,
Hermine T. Snyder.

[fol. 1]

TESTIMONY OF FRANCIS P. McGRANAHAN

Sworn by Mr. Devine; direct examination by Mr. Devine:

Q What is your full name?

A Francis P. McGranahan.

Q What is your position?

A Chief of Police of the City of Manchester.

Q* You have appeared at this hearing this morning in answer to a subpoena that was served on you?

A I have.

Q Did that subpoena ask you to bring the records of your department with reference to this case?

A Yes, it did.

Q Do you have the records with you?

A No, but they are available.

Q Are they in your possession or in the Attorney General's possession?

A They are at headquarters.

MR. DEVINE: We will need the records, Your Honor, but perhaps I can go on for a time with the Chief. Do you have the warrants, Your Honor?

THE COURT: I don't have them.

Q Before we get to the warrants with which we are concerned, can you tell us about normal procedure in the Manchester Police Department when search warrants are [fol. 2] wanted to search somebody's house or somebody's vehicle? Do they normally come to you first to get the warrant or get the complaint sworn to?

A Not necessarily. The captain or the deputy chief—however, if I am present or available they usually, let us say go to the superior officer.

Q And if you are present they come to you to sign the complaint?

A Yes.

Q Is that right, Chief?

A Yes.

Q Now, is a record made at the police station when a search warrant is asked for? That is, is there some record made on some of your dockets up there that a search

warrant is sought by a certain person, and a time when it is sought?

A There is a note generally left by the officer.

Q Where would that note be left? Would it be deposited with the record of that particular case?

A I don't know. I can't say for sure, Counselor, if that type of note would be included in the records of the case. It could or could not be.

Q Normally your procedure, however, would be to include such a note somewhere in the records of the case?

A I would say all records are contained somewhere in the files of the Manchester Police Department.

Q Under your normal procedure what would that note indicate with reference to the warrant?

[fol. 3] A It would be a note to the effect that on such a day and hour the officer, after securing a search warrant, proceeded to a certain house and searched the home.

Q Would a similar notation normally be made with reference to an arrest warrant?

A Yes. Yes, there would be a note in regard to an arrest.

Q Is another note made in these records after the warrant has been returned, executed by the officer to whom it was directed?

A Would there be a return made?

Q Yes.

A Not necessarily.

Q The only return which normally would be made would be on the warrant itself—the officer's inventory on the warrant itself?

A Yes. Now,—yes. I want to explain further. If the search warrant resulted in the arrest there would be a record—there would be a note of the results of the search.

Q No, on February 19th, Chief, four search warrants and an arrest warrant were issued in the case of Edward H. Coolidge, Jr. I believe you have seen these warrants, and I believe you signed as complainant on all of them. I show you a warrant which is marked 7298-A?

A Yes.

Q I ask if that is your signature at the bottom of that complaint?

[fol. 4] A Yes, it is.

Q Do your records indicate whether these search warrants—the four search warrants—were sought and received simultaneously with the arrest warrant, or whether they were sought and received prior to the arrest warrant? I don't believe the warrants themselves show that; but perhaps they would.

THE COURT: Perhaps the returns would indicate the time of day that they were executed, wouldn't they?

MR. MAYNARD: Are you asking what his records show as to the situation, Brother Devbine?

MR. DEVINE: Yes.

A If my record will show if these warrants were executed at one and the same time—all of them?

Q Yes.

A No.

Q Your records wouldn't show that?

A No.

Q Would the warrants themselves show that, Chief?

A I think this is the warrant I signed—the first—the original warrant that I had signed.

Q That is the one which has the suffix capital A?

THE COURT: Are you talking now about the search warrant or arrest warrant?

[fol. 5] WITNESS: This is the arrest warrant.

Q That is the arrest warrant?

A Yes, this is the arrest warrant.

Q These are search warrants, Chief. I think this appears to be the arrest warrant. This is marked 7298?

A Yes.

MR. DEVINE: Where is the original of this?

MR. BUSSIERE: That would be the original, filed with the Court, if it is the arrest warrant.

WITNESS: This is the arrest warrant.

Q So you believe that in this case you signed the arrest warrant first?

A Yes.

Q And then signed the search warrants? Is that right?

A As far as I can determine. Here is the first one I had looked at.

MR. MAYNARD: Again, Brother Devine, I can't tell from your question—are you asking what the records at the station show, or what his recollection of events is?

MR. DEVINE: I asked if his records would show when they were issued. He says no. Now I ask if he has any recollection as to when they were signed by himself, [fol. 6] acting as complainant.

WITNESS: I am not quite sure there would be a copy of these at the station.

Q Would the copies in the station indicate when they were issued with reference to each other? You state there is a date on the warrant, but there is no time stated?

THE COURT: I take it there is a date on all warrants?

MR. DEVINE: Yes; February 19, 1964.

MR. BUSSIERE: May I inquire what the total number of warrants which you have is?

MR. DEVINE: The four search warrants, which appear to be originals, and a certified copy which appears to be the arrest warrant. I was going to have them marked in a minute, so that we can keep track of them.

MR. BUSSIERE: Off the record—

(Discussion between counsel off the record)

Q Is there anything in those warrants, Chief, which would serve to refresh your recollection as to the order in which they were signed, or whether they were all signed, in fact, simultaneously?

A They were all signed the same day, but it is difficult for me to say at what time of day I signed them.

[fol. 6] Q But whatever time you signed them, did you sign them all together, as you recall it—the search warrants and the arrest warrant?

A I don't remember.

MR. DEVINE: If we may have these marked, Your Honor, so that we can keep track of them?

THE COURT: All right.

(Search warrants marked Defendant's Exhibits A, B, C, and D; arrest warrant marked Defendant's Exhibit E)

MR. DEVINE: You have no objection to their being marked?

MR. MAYNARD: No; they are a part of the case already.

Q Chief, referring now to the warrant which has been marked Defendant's Exhibit A, and which is 7298-A—

A Yes.

Q This appears to be a search warrant to search certain premises, a laundermat, at 712 Valley Street. Is that correct?

A Yes, that is correct.

Q And you signed it as complainant? Is that correct?

A Yes.

Q Attached to that by a staple is what appears to be a photocopy of a complaint or the body of a complaint. [fol. 7] Can you tell us who drafted the language in that complaint?

A The original language in this complaint?

Q Yes.

A It was drafted, to my knowledge, in the Attorney General's office.

Q At the time you signed this complaint was this photocopy of the body of the complaint attached to the complaint, or was that attached thereafter?

A It was attached to the complaint.

Q At the time you signed it, Chief?

A Yes.

Q And this list is also a photocopy which is stapled right below the body of the complaint, giving a list of items which supposedly were to be searched for. Do you know who made that list up?

A No, I do not—not for sure.

Q Was that also attached to the complaint at the time you signed it?

A To my knowledge it was, yes.

Q Now, your oath to this complaint was subscribed before whom?

A By Attorney William Maynard.

Q Was this complaint taken by you personally before the Attorney General for his subscription to your oath?

A Yes.

Q There appears to be another stapled list on the [fol. 8] search warrant side of this document, Chief, which would appear to be a duplicate of the one on the left hand side? Is that correct?

A I can't say definitely sure, but I assume that it is.

Q And when Mr. Maynard took your oath to the complaint, did he at the same time sign this search warrant as a Justice of the Peace?

A Yes, sir.

Q Is that true of all the other warrants as well?

A Yes, sir.

Q And he signed them all in your presence, did he, Chief?

A Yes, sir.

Q Do your records indicate at what time the Attorney General, Mr. Maynard, took charge of the investigation of this case?

A Yes. I would have to be—my memory would have to be refreshed on the day that we went to Concord. Acting on information, I went to the Attorney General's office sometime in the afternoon.

Q Was it before the Mason girl's body was discovered that Attorney General Maynard entered the case, or was it afterwards, Chief?

A It was after.

Q He was present on January 21st, 1964 at the scene where the girl's body was recovered?

A The Attorney General?

Q Yes.

[fol. 9] A I don't recall seeing him there.

Q Who has the record which indicates the date and the time when he actually took over supervision of the investigation of the case?

A Well, it is my understanding that the Attorney General automatically takes over the investigation of capital cases in the State of New Hampshire when he gets knowledge of the crime committed.

Q I think perhaps you misunderstood my question. Of course you are correct; the law requires the Attorney General to take over when there is a homicide or suspected homicide, but who in your department would have the

record showing the date and the time when the Attorney General actually took over the investigation of this case, or would there be such a record in your department?

A I would—I would say that the Attorney General entered into this case before the body was found; but definitely I know that the Attorney General's office did enter into this investigation prior to the finding of the body.

Q That is, the girl was supposedly missing from the evening of January 13th, 1964?

A Yes.

Q And as time went on, and before her body was found, you became somewhat apprehensive as to what happened to Pamela Mason?

A Yes. We were in fact greatly disturbed from the [fol. 10] first day the child was missing.

Q And her body was not actually found until January 21st? Is that correct?

A I believe that is the date it was found.

Q So sometime between those two dates—January 13th when she disappeared and January 21st when the body was found—you reported to the Attorney General's office and—

A Yes, and I requested the assistance of the Attorney General's office.

Q But you do not recall the exact date?

A No. I am sorry.

Q But at any rate, there is no doubt that once the Attorney General came into the case, he was in complete charge of the investigation of the case, and at all times thereafter?

A Yes, sir.

Q Did you assign any particular officer under your command to work with the Attorney General, and head up your forces, so to speak?

A Yes. Captain John Stipps.

Q So that after the Attorney General came in, and maybe even before that, Captain John Stipps had been in charge of the Mason case?

A Yes.

Q How long after her disappearance was Captain Stipps assigned to this case, if you remember?

[fol. 11] A I know that Captain Stipps was immediately assigned to shape up the investigation of the girl's disappearance, possibly the day after the child disappeared.

Q This would be somewhere around January 14th or 15th?

A Around January 14th or 15th, yes.

Q Would your records indicate, Chief, when Mr. Coolidge was first questioned by any of your officers with respect to this case?

A I wouldn't know.

Q Is it normal when someone is questioned to have a notation made by the officer who questioned him in the records of the case?

MR. MAYNARD: I object, and I don't believe this is material to the inquiry here. It looks to me as though he is now delving into other matters.

MR. DEVINE: It may have a bearing on what we claim is illegal detention later. The State has a certain time to hold a person for questioning.

THE COURT: May I have the question?

(Question read)

THE COURT: Do you mean at the time during which the questioning is conducted?

MR. DEVINE: The date and time, Your Honor.

[fol. 12] THE COURT: He may answer.

Q Can you answer, Chief?

A I would like to have the question again, if you don't mind. You were asking me when the superior officer questions a suspect or a respondent if there is a note made of it?

Q Yes.

A Yes, there is a note made of it.

Q So that somewhere in your records in the police department there would be a notation concerning whatever date or time Mr. Coolidge was questioned about the Mason case? Is that correct?

A Yes, sir.

Q Let me ask you something further about your records. Is it usual when a man is brought in to the station—say for questioning—to make a note of the time that he is brought in?

A Yes. Yes.

Q Do you know if such a note was made with respect to Mr. Coolidge when he was brought in on Sunday, February 19th, 1964?

A I can't answer that question.

Q Excuse me. February 2nd, not February 19th. Would it be normal to have such a note made if he was brought in for questioning, as to the time he arrived?

A On February 2?

Q Yes; February 2, 1964.

[fol. 13] A I would say yes.

Q Now, when a man has been questioned, and let us say is actually put under arrest, is a notation made in the station record at that time made, showing that he was arrested for a certain crime, and the time put down on that?

A If a person is held for an arrest it is put on the daily blotter—the time of day and date and the name of the arresting officer.

Q Who under your command would have custody of the record which would show at what time on February 2, 1964 Mr. Coolidge came in for questioning, and what time on that day he was placed under arrest for larceny from Cote Brothers?

A I think—well, I am quite sure that Inspector Thomas Bolcock would have the records. However, I think that that particular record would be under the care of Captain Stipps and Lieutenant John Curran.

Q In other words, as far as Mr. Coolidge and the Mason case go, all of those records have been gathered in one place, under the custody of either Captain Stipps or Lieutenant Curran?

A Yes.

Q And there are no independent records at the police station, as such, connected with Mr. Coolidge or with this case, in the station, except in the custody of these two officers? Is that correct?

A There could be records or parts of records in an-
[fol. 14] other department at police headquarters—in our
general records.

Q It is possible that there might be some duplication
of the records in one place or another?

A Yes.

Q But would your independent records have a nota-
tion such as I have asked about—as to the time when he
came in for questioning and the time of his arrest?
Would you have that information other than in the cus-
tody of Captain Stipps and Lieutenant Curran?

A No. Whatever records would be in any other sec-
tion of the department would also be in the official rec-
ords of the case.

THE COURT: Do I understand, Chief, that the body
was discovered February 21st? Can you tell me that?

WITNESS: No. I don't have any notes with me.

MR. BUSSIÈRE: I believe it was discovered January
21st, Your Honor.

WITNESS: Yes; January 21st. I think it was either
seven or eight days after she disappeared.

MR. DEVINE: I would like to have the time he was
brought to the station for questioning on February 19th
[fol. 15] and the time he was arrested; also the time Mr.
Coolidge was brought in on February 2nd, because we
may want to question the chief or other officers about it.

THE COURT: Gentlemen?

MR. BUSSIÈRE: Well, Your Honor, the State will
represent that there is no record that would indicate the
exact time that the search warrants were issued on Feb-
ruary 19th other than the warrants themselves show.

THE COURT: And no one has any recollection
whether those warrants were issued either before or after
the arrest warrant?

MR. BUSSIÈRE: The State's representation would be
that they were all issued at the same time.

THE COURT: All simultaneously?

MR. BUSSIÈRE: All simultaneously.

THE COURT: What about the other records he has
asked about?

MR. BUSSIERE: Before we get to that, Your Honor, for the record we would like to indicate for the record that there was a fifth search warrant issued, with no return.

THE COURT: I have seen that. That was issued on February 21st.

[fol. 16] MR. BUSSIERE: My previous statement is amended to that extent. So far as the record of the arrest of Mr. Coolidge and the charge of larceny, if the Court will give me a few seconds I may be able to say something about that.

MR. DEVINE: You may sit down, Chief.

THE COURT: Yes.

(Conference between counsel off the record)

MR. BUSSIERE: Your Honor please, we will have available after lunch a report indicating—which will come from the police records—the time that Mr. Coolidge was booked for the crime of grand larceny on February 2nd or 3rd. Now, this particular report is what is known as an arrest form, and will disclose the name of the defendant, the nature of the offense, and the information relative to that offense, and the time that he was booked for that offense.

THE COURT: Will you also have the other thing he asked for—the time he was questioned, the time he was in the station when he was questioned prior to the arrest?

MR. BUSSIERE: What the State is willing to do [fol. 17] with respect to that is to make available the witness who made the notation.

THE COURT: The Chief indicates that there is a record at the station showing the time.

MR. BUSSIERE: To my knowledge, that would be in the general report form, which is privileged at this point.

THE COURT: There isn't just a report of the time of the questioning?

MR. BUSSIERE: If there is, I will produce it. I understand we will be able to get from the officer that he was brought in at such and such a time, and we can go on from there.

MR. DEVINE: We say we are entitled to examine the original records, but that the Court should examine them before we do. This is the original record; not some record made by the Attorney General's office. We say that we are entitled to examine them after the Court has examined them. If they will be here after lunch, I have no further questions of the Chief at this time.

THE COURT: Do you expect to have the Chief here after lunch?

[fol. 18] MR. BUSSIERE: No, Your Honor.

THE COURT: How about you?

MR. DEVINE: No; I don't believe we will need the Chief this afternoon, Your Honor.

THE COURT: We will stop here until two o'clock.

(Recess 12:30 to 2:00 p.m.)

(Arraignment on State 3159 and State 3179, before proceeding with hearing)

MR. DEVINE: Your Honor, may we proceed on the items we were on this morning?

THE COURT: Yes. I believe the State was going to have some information for you.

MR. DEVINE: Yes, Your Honor,—some records.

MR. BUSSIERE: Your Honor please, I have the arrest report, wherein the defendant was charged with the crime of grand larceny on February 3, 1964. The rear of the form contains a brief summary of some of the evidence in the case.

THE COURT: I believe probably the back part came in through or as a result of—as a work product,—the work of officers, a report of their investigation. The front [fol. 19] of the arrest report indicates the date and time of his arrest as 2-3-64—2-3-64, at 2:30 a.m.

MR. BUSSIERE: If it please the Court, this is a photostatic copy of what the Court has, and it can be separated—the rear from the front part of it.

THE COURT: Do you wish to see the front part of it? Do you object to his seeing the front part of it?

MR. BUSSIERE: No, Your Honor.

MR. DEVINE: The only comment I have is that on the part which gives the time of arrest it apparently doesn't give the time that he was brought in for questioning. I would like to ask the Attorney General if there is any record of it on the blotter.

MR. MAYNARD: I think the time is the same; the time detained and the time arrested is the same.

THE COURT: No; that is not so. Quite obviously from the back of the sheet it is not so.

MR. BUSSIERE: Until such time as the man was under arrest, the evidence would be that he was not under arrest.

[fol. 20] THE COURT: But he wants to know at what time he was brought to the station.

MR. BUSSIERE: The evidence will indicate that he voluntarily came to the station.

THE COURT: There is nothing in here to indicate that.

MR. BUSSIERE: No, there is not, but there will be evidence, Your Honor.

THE COURT: As I understand from Chief McGranahan's testimony, when a man comes in for questioning there is some record of the time he comes into the station for questioning.

MR. DEVINE: Your Honor please, this only indicates that he was not arrested until February 3rd at 2:30 in the morning. Our information is that he was in the custody of the police from one o'clock on February 2nd the day preceding.

MR. BUSSIERE: His information is partly correct and partly incorrect. His information that the man came to the station at a particular hour, give or take a few minutes, may be correct; but his information that the man was detained is not correct.

THE COURT: Well, is it your position that he could [fol. 21] have left the station at any time up to 2:30 in the morning?

MR. BUSSIERE: That is correct.

THE COURT: But you say he arrived there at 1:30 the previous day?

MR. BUSSIERE: At the request of the police, he came in voluntarily.

MR. DEVINE: There may be some question about that request.

THE COURT: I assume he was requested by the police to come in for some purpose?

MR. BUSSIERE: That is correct.

THE COURT: Did they call him in or give him some paper?

MR. BUSSIERE: There was some previous talk with the man, with the understanding that he would come in later. On the morning of February 2nd there was a telephone call made to him, asking if he would be available on this day; and those were the circumstances under which he came to the station.

THE COURT: Do you mean he drove to the station?

MR. BUSSIERE: He drove down to the station by himself.

[fol. 22] MR. DEVINE: I would like to call for the first sheet of the arrest report, Your Honor please.

THE COURT: Yes; it may be marked.

MR. DEVINE: Would you mark please the photostatic copy of the arrest report as Defendant's Exhibit F?

(Copy of report marked Defendant's Exhibit F)

MR. DEVINE: We propose now, Your Honor, to go into some of the items taken without warrants, to clear away some of the underbrush. I would like first to offer the deed of the Coolidge house—that is, the premises where things were taken without a warrant.

MR. BUSSIERE: We have no objection to that if the Court thinks it is material.

MR. DEVINE: I think that ownership of the premises may be material.

THE COURT: Will you stipulate that they were owned by the defendant?

MR. BUSSIERE: Yes, if they want such a stipulation. He was married—if they want such a stipulation, we will agree.

THE COURT: It is stipulated that the premises at 312 Seames Drive were in the name of Edward H. Cool-

[fol. 23] idge, Jr., and that Edward H. Coolidge, Jr. was in the month of February, 1964, married to Joanne Coolidge, and she was living in that house with him. This indicates that the property was purchased by Mr. Coolidge on December 17th, 1960.

MR. DEVINE: Also, Your Honor please, the Court will recall that after recent hearings the Court ordered the State to furnish the defense with a list of items which were taken without a warrant and which were in the State's possession. In response to the Court's order, Brother Graf received a letter from Brother Kalinski, Assistant Attorney General, under date of July 24th, containing such a list. We would like to offer that letter at this time and make it a part of the record.

THE COURT: I take it there is no objection. That may be marked.

(Letter giving list of items taken marked Defendant's Exhibit G)

THE COURT: I assume that the prosecution will indicate that they have no other things in their possession, other than the things listed in the search warrants and [fol. 24] on this letter of July 15th, was it?

MR. BUSSIÈRE: Except, Your Honor, for items of microscopic or of no apparent value. It is my understanding when we made up the list we were to give a list of the items of property of the defendant, but I did not understand that we have at any time been required to list the microscopic, or perhaps a better term would be items of no value—no evidentiary value.

MR. DEVINE: This is not my understanding. I would like to read from the transcript. The Court said, "In any event I will order the State to furnish you with a list of his personal possessions, including any taken from his person, house or car." This is not as limited as my brother is now intending to limit it.

MR. BUSSIÈRE: As something quite well known to the defendant and to his attorney, there was a request made of Mr. Coolidge for specimens from his head and from his body, which were given to the police at such request voluntarily, complying with the request. I do not consider that hairs, for instance, are property. We ex-

[fol. 25] cepted those items, or items of a similar sort, from the list which has been supplied.

MR. DEVINE: We are not making any complaint about the hair, but do I understand that this, with the exception of the hair, is a complete list?

MR. BUSSIERE: Yes; of items taken from his body, yes.

MR. DEVINE: All other items are here listed?

MR. BUSSIERE: All others items are listed under "general description", yes.

MR. DEVINE: May we have a short recess, Your Honor, to examine this latest exhibit on the time of arrest?

THE COURT: Let me know when you are ready.

(Recess 2:30 to 2:40 p.m.)

MR. BUSSIERE: Your Honor please, I want to clarify one last remark which was made on the record, I believe. I said with reference to the items which were described in the warrant that the return shows in a general description the items taken. One of those is vacuum [fol. 26] sweepings. Under that category, so that later on no one will say that we were misleading the defense—under that category there are some twenty-two calibre bullets which were in fact picked up by a vacuum cleaning. I am speaking now about items which were seized by warrant.

THE COURT: Those are described in the warrant returns. He says they are described as vacuum sweepings, but they are in fact bullets.

MR. REYNOLDS: Inspector Glennon.

TESTIMONY OF DONALD F. GLENNON

Sworn by Mr. Reynolds; direct examination by Mr. Reynolds:

Q Would you tell us your name, please?

A Donald Francis Glennon.

Q You are with the Manchester Police Department?

A Yes, I am.

Q And your rank?

A Inspector.

Q How long have you been an inspector?

A I was promoted in January, sir.

Q In January—

A Of this year.

Q All right. Since the first of the year have you been [fol. 27] in any special section of the police department?

A Well, I have worked on the school patrol; and when the schools closed I went to the detective division.

Q Referring to the Pamela Mason case, at some time were you assigned to work on that case?

A Yes, sir.

Q Who assigned you?

A Captain Stipps.

Q Were you assigned to work under Captain Stipps?

A Yes, sir. I might say Deputy Houle assigned me to Captain Stipps.

Q Captain Stipps was in charge, as far as the Manchester Police Department was concerned with the investigation?

A Yes, sir.

Q You and other gentlemen worked under him?

A Yes.

Q You took your orders from him and made your reports to him?

A Yes, sir.

Q When did you first start working on the Mason case?

A It was early—the latter part of January. I am not sure of the exact date.

Q The Mason girl's body was found, I believe, on January 21st. Would it have been before then or after?

A I think I worked with them after the body was found.

Q That would have been shortly after?

[fol. 28] A Shortly after, yes, sir.

Q Prior to January 21st did you know Mrs. Edward Coolidge, Jr.?

A Did I know her?

Q Yes, sir.

A No, sir.

Q When was the first time you talked with Mrs. Coolidge, Jr. or with Edward Coolidge?

A It was on February 2nd, to the best of my knowledge.

Q And that was a Sunday?

A Yes, sir.

Q Can you tell us the circumstances as to how you happened to speak to him or to Mrs. Coolidge?

A Which would you prefer first—the man or the wife?

Q Sorry. Which would you prefer first—the husband or the wife? Which happened first?

A The husband, Edward. We were called to the station, told that there was a party there to see us. I was working with Officer LeClair at the time. This was about quarter of one in the afternoon. We got there, and Mr. Coolidge—actually it was Officer LeClair that he wanted to see. Officer LeClair went in and talked with him and I remained in the outer office, and then shortly after that I went in and talked with him myself.

Q I want to get the sequence. Were you on duty that morning?

A That day, yes.

[fol. 29] Q What time did you go on duty?

A Our actual reporting time was eight o'clock in the morning.

Q Did you or Officer LeClair telephone the Coolidge house that morning?

A I did not.

Q You didn't?

A No, I did not.

Q It is your understanding that he reported to be questioned on the Pamela Mason case?

A Yes.

Q And was to take a lie detecting test?

A Yes.

Q And you and Officer LeClair were to take charge of the questioning of Edward Coolidge?

A Yes, sir.

Q At quarter of one when you got there with Officer LeClair, he was already at the station?

A Yes, sir.

Q Now, when did you first speak with Mrs. Coolidge?

A Approximately ten-thirty that night.

Q Where was that that you spoke to her?

A At her home.

Q So that from one o'clock until ten-thirty you didn't see or speak with Mrs. Coolidge?

A Yes. I won't say I didn't see her, but I didn't [fol. 30] speak with her. I saw her, yes.

Q Where did you see her?

A She came to the station.

Q Do you have an idea what time that was?

A It would be in the vicinity of two-thirty or three o'clock in the afternoon.

Q Do you happen to recall seeing her leave the station?

A It was shortly after. I didn't make any point of noticing, no.

Q At this time many people were being called in for questioning and were taking lie detector tests? Is that so?

A I believe that is so.

Q Had you been ordered to give him a lie detector test that Sunday?

A Not ordered, no.

Q It was your own decision?

A Not mine, no.

Q Whose decision was it?

A I don't know as I exactly understood. He was coming in on his own to do this.

Q All right. Was LeClair questioning him from quarter of one, or one, for some time?

A He was in there some time.

Q But there would be just yourself, Officer LeClair and Edward Coolidge?

[fol. 31] A Yes.

Q Then at some time you started questioning him?

A You say "questioning". It wasn't a questioning period at that time.

Q What was it about?

A We wanted him to go to Concord to take a polygraph test.

Q A lie detector test?

A Yes.

Q Was the discussion whether he would or wouldn't take the test?

A That is right.

Q At some time he did take the test?

A Yes.

Q At what time did you persuade him to take the test?

A This would be from three-forty-five to four o'clock.

Q Surely, Officer, there were many events during this day. At some point did you write up the events of that day as you saw and observed them?

A Up to that point.

Q The events of that day?

A Yes; I have a report on that day covering Edward Coolidge. Yes.

Q At that time you made note of the times things took place, and so forth, and the sequence of events?

A Whether or not the time is on there, I don't know. I believe it is, but I am not positive.

[fol. 32] Q But at any rate your report ended up going into Captain Stipps' possession?

A Yes, sir.

Q Now, as I understand it, from about one o'clock until quarter of four—was it?

A Approximately.

Q The discussions as to the lie detector tests went on?

A Yes.

Q Were there any discussions as to his particular involvement in the case, as to his being a suspect?

A As to his being a suspect?

Q Yes.

A What we wanted to do was get him to go up and take the test to see if he was involved, yes, in the Mason girl case.

Q Was it you and Officer LeClair who had the idea that he should take the lie detector test?

A Yes, sir.

Q Can you tell me what happened next?

A He agreed, and we took him to Concord.

Q The three of you went up to Concord?

A Yes, sir.

Q Where did you go in Concord?

A We went to the new Motor Vehicle Building, of the State buildings—the state police division.

Q Who did you see there?

[fol. 33] A Detective Sergeant McBain.

Q You asked Detective Sergeant McBain to give Edward Coolidge a lie detector test?

A Officer LeClair did.

Q Were you present through this test?

A Not through the full of it, no. We watched a portion of it, but we were downstairs in the cafeteria.

Q How long was he upstairs with Detective Sergeant McBain on this test?

A Over an hour. Perhaps an hour to an hour and a half.

Q It took about half an hour for you to get to Concord?

A About half an hour, yes.

Q When the test was over, what time would you say it was?

A In the vicinity of six-fifteen, give or take.

Q At that time did Sergeant McBain report to you anything about the developments in that test?

A Not to me.

Q Or in your presence?

A No. He called Officer LeClair aside and talked with him.

Q Not in your presence?

A No; they went in another room, and I was with Mr. Coolidge.

Q Neither of you heard what was said?

A Neither me or Mr. Coolidge, no.

Q Then you got back in the car and came back to Manchester?

A Yes, sir.

[fol. 34] Q That was at what time?

A I would say roughly, seven o'clock we were home—seven or seven-fifteen.

Q And by "home" you mean?

A In Manchester.

Q In the course of the ride back to Manchester, did Officer LeClair tell you anything about the developments—particularly the Cote larceny, so-called?

A No, he did not. As a matter of fact, Mr. Coolidge and I, while we were talking at the State Building—he started talking about something, and I told him right then and there that anything he might say would be used for or against him—anything he might say to me. Then coming home in the cruiser, the police department vehicle, I asked him one question. He said, "Would this be held against me or used in court against me?" I said, "Yes", and he said no more.

Q Maybe we should stop here for a second. Is it fair to say that until seven o'clock when you got back to Manchester, you had no idea Edward Coolidge was involved with the Cote larceny case; it was all involved with the Pamela Mason case?

A There was talk in the State Building with me, by Mr. Coolidge, about the larceny of a sum of money. He didn't say it was Cote. He said he had admitted to something.

Q To—

A Mr. McBain, apparently.

[fol. 35] Q In the course of the lie detector test?

A I don't know.

Q At some time did you check with Inspector McBain?

A No, I didn't.

Q You were not concerned with the larceny charge at all?

A Primarily, no.

Q Will you tell us what happened when you got back to the station around seven o'clock, as I understand.

A Then we just started talking with Mr. Coolidge.

Q About—?

A About the Mason case.

Q And "we" means you and—

A Officer LeClair.

Q Where were you talking with him?

A Upstairs; what you might call the third floor.

Q The third floor. How long did you talk with him?
Was there a break for dinner?

A Well, it wasn't constant talking. We would talk with him. He would say something. We would verify it, and leave him alone. It was off and on.

Q Again the talk was all about the Pamela Mason case?

A Yes, sir.

Q There wasn't any talk about any unsolved Cote larceny?

A No.

Q How long did you keep on talking with him? Until when?

[fol. 36] A Well, at two o'clock we figured we had what we were looking for; at least it satisfied us at the time. This would be about two o'clock in the morning. Then we started talking with him about the Cote larceny.

Q This was an unsolved theft of some three hundred dollars from Cote Brothers Bakery?

A No one had been apprehended for it.

Q The reason you knew about it was because apparently it came out in the course of the Concord visit? Is that right?

A I would say yes.

Q Up until two o'clock you paid no attention to that?

A No, sir. Only minutely in Concord or on the way back, but only very minutely.

Q Then, Officer, you arrested him at two-thirty a.m.?

A That is the time he was booked. That is the procedure down at the lieutenant's or the captain's desk when he is actually charged with the crime.

Q Is that when he was arrested?

A You might say he was arrested at two o'clock, when we started to talk with him—

Q Maybe I am confused.

A With myself, if it was Mr. Coolidge in the ordinary circumstances, I would have him booked for—possibly investigation; then talk with him and then he would be booked for the charge. There would be a time element of [fol. 37] the actual arrest and the actual booking on the charge.

Q Is it fair to say up to two-thirty he was not under arrest?

A As far as I can say, it was two o'clock, though it was in the papers he was going to be charged.

Q All right. At two o'clock he is charged with the crime, and two-thirty you did what?

A Actually booked him. That is the final—

Q Tell us what "booking" means?

A Booking is the actual appearance before the lieutenant and captain in charge. He is asked his name, date of birth, his address, where he was born. Then we, as the arresting officers,—I notify the man in charge that he was arrested from a certain spot and is to be charged with a certain crime.

Q Who, by the way, was the commanding officer?

A That would be Lieutenant Engelhart.

Q At that time, around two o'clock, you went down to see Lieutent Engelhart and said you wanted to charge him with the Cote larceny?

A No. At two-thirty we went down to the lieutenant.

Q Then you put him in a cell, from then on?

A Well, he is allowed to arrange bail for himself.

Q What do you know about bail being set?

A Bail was set at one thousand dollars.

Q Do you call a bail commissioner at two-thirty in the morning?

A If he has the money or requests to be released, we [fol. 38] call the commissioner—rather, the houseman has to do that duty. He calls the bail commissioner, and he puts up the collateral or cash—he puts up the money and is released.

Q Would the commissioner come down there?

A At two-thirty in the morning he could have been released.

Q Did the bail commissioner come down there?

A No; we call him on the 'phone and tell him the charge, and he sets the amount of bail.

Q But he doesn't come down there?

A Not unless he is notified that the party has the cash or collateral.

Q Is this bail and all that recorded on another sheet?

A The booking sheet has a place on the side—at the top of the booking sheet—it has various captions, and one of them, on top, is "Bail".

Q On this one do you know that bail was set, at two-thirty in the morning, at one thousand dollars?

A Yes.

Q Was Edward Coolidge allowed to make a 'phone call?

A He is entitled to, yes.

Q Did you see him do it?

A I didn't see him arrange for bail, no.

Q Did he make any 'phone calls?

A I don't know whether or not he made any 'phone calls relative to bail.

[fol. 39] Q Did he make any 'phone calls?

A Yes, he made 'phone calls; but relative to this, I don't know.

Q Assuming the bail commissioner sets bail at one thousand dollars. You tell the person under arrest?

A Yes.

Q Do you then tell the person, "You can make a 'phone call to arrange bail", that night?

A I think he knew that the bail was set at one thousand dollars, but due to the hour he didn't call anyone. He didn't make any attempt, I don't believe, to bail himself out.

Q After you booked him did you continue to question him?

A No; he was turned over to a houseman and put in a cell.

Q Then I hope you went home to bed?

A No, I didn't.

Q Were you still in the station for some time?

A Not immediately.

Q Did you type up a report?

A Yes, I typed up a report on the back of that sheet, because he was due in court in the morning.

Q Now, in addition to going up to Concord, that Sunday evening you went to Edward Coolidge's house?

A Yes.

Q You say that was when you saw Mrs. Coolidge?

A Yes.

[fol. 40] Q And it was around ten-thirty?

A Yes.

Q Was this something you and Officer LeClair decided to do, or were you told to do it, or what?

A We decided to do it.

Q You decided to do it?

A On our own.

Q And the purpose of going over there was—?

A To talk about the Mason case.

Q To talk about the Mason case with Mrs. Coolidge?

A As it was involving her husband.

Q And what she knew about the Mason case?

A That is right.

Q You decided to go over there on your own?

A Personally, or with another subject.

Q You and Officer LeClair made the decision to go over there?

A It was Detective Sergeant McBain and myself who went to the home.

Q So Officer LeClair didn't go with you?

A No, he didn't go with us.

Q So you made the decision to go to her home about ten-thirty?

A Yes.

Q You were in her home how long?

A Approximately three-quarters of an hour.

Q Was she alone?

[fol. 41] A When we arrived, no. Her mother-in-law was there.

Q And that would be—?

A Edward Coolidge's mother.

Q Did she leave?

A Shortly after.

Q Shortly after you arrived?

A Yes.

Q Did you ask her to leave?

A No, we didn't ask her to leave.

Q Did Detective Sergeant McBain ask her to leave?

A No; he didn't ask her to leave, no.

Q Tell us the circumstances.

A We wanted to talk with Mrs. Coolidge, the wife of the subject, alone. We didn't know as Mrs. Coolidge should be there or not. We felt that we wanted to talk with her alone. We started to talk with her, and then Mrs. Coolidge suggested leaving. After that we asked one or two questions.

Q It was indicated that you preferred to talk with her alone?

A Yes.

Q Then Mrs. Coolidge, Sr. left?

A Yes.

Q Did she leave alone?

A She made a 'phone call. No. She asked some member of her family to pick her up.

Q Then you stayed with Mrs. Coolidge how long?

[fol. 42] A Mrs. Coolidge, the mother, was there perhaps five to ten minutes, and then the remainder of the time—like I said, we were there about forty-five minutes; so it would be thirty to forty minutes.

Q I suppose Mrs. Coolidge at this point was wondering where her husband was?

A No. She knew where he was.

Q I mean why he wasn't home. I suppose you told her you were still busy with him at the station?

A Yes, I believe we did tell her that—that he was still in the station.

Q By the way, do you know if after you left other people were questioning him?

A No, I don't know that.

THE COURT: What time was this?

WITNESS: This was ten-thirty, when we arrived at the home of Mrs. Coolidge.

Q This was on lie detector Sunday?

A The 2nd of February.

Q Did you tell Mrs. Coolidge why he was at the station, and whether or not he would be home?

A Well, I don't know. She understood this prior to our coming there.

Q I am sure she knew that he was at the station.

A Relative to the Mason case.

[fol. 43] Q You said he was still at the station being questioned about the Mason case and you didn't know when he would be home?

A I don't recall as to the words that were used. She understood that he was there. There was no question where he was. I am inquiring whether or not you told Mrs. Coolidge the circumstances of why he was at the station and whether or not he would be home or not?

A I believe she asked if he would be home that night. I think we said, "Possibly not", "We didn't know", "Possibly, yes, but we didn't know."

Q When you said "Possibly not", did you have in mind arresting him for the Mason case, or did you have in mind arresting him for the Cote larceny which came to light up in Concord; or was it both?

A Not being satisfied—there was some doubt about some sum of money. Due to that, I didn't know. On the Mason case we were not satisfied with his story and therefore the answer to Mrs. Coolidge.

Q My question is when you told her he wouldn't be home that evening, did you have in mind arresting him for the larceny case or did you have in mind arresting him for the Mason case?

A I don't know that we had the idea that we were going to arrest him at all.

Q You just had in mind keeping him all night in the station? That is what you had in mind?

[fol. 44] A Well, not necessarily.

Q Well, Inspector, what did you talk about there?

A We talked about what he had told us relative to his activities, and asked her to corroborate or deny.

Q At certain times and dates?

A At certain times and dates.

Q And all that had to do with the Pamela Mason case?

A Yes, sir.

Q You or Detective Sergeant McBain took notes as to what the conversations were?

A I didn't. No, sir.

Q You left there around eleven-thirty?

A Eleven-fifteen, possible, or eleven-thirty.

Q On the way out did you stop at the garage?

A They haven't a garage.

Q Did you look in any cars?

A Yes, we looked in both cars. They had two cars.

Q There was a 1963 Chevrolet convertible?

A Yes.

Q And a Pontiac car?

A Yes.

Q You went out on the street and looked at them?

A Yes.

Q Was Mrs. Coolidge with you?

A No; she was in the home.

[fol. 45] Q When you were in the home, you asked her questions about Ed's possessions—clothes he wore, weapons he might own?

A Yes.

Q The pants he might have been wearing on the night of January 13th?

A Yes, sir.

Q Were these pants shown to you?

A Yes, sir.

Q Where was that?

A In the home.

Q In the house?

A Yes.

Q In the living room or the kitchen?

A In the bedroom, I believe it was. Yes, sir.

Q At that time were any weapons shown to you?

A Yes, sir.

Q What else? Meaning what else was shown to you or did you see that evening?

A That is about the substance of what we were shown—his clothes, the guns. I can't think of anything else that was shown to us.

Q By the way, do you happen to know that Captain Stipps had talked with Mrs. Coolidge that afternoon in the station by the time you went to the house?

A I am not aware of the fact.

[fol. 46] Q You didn't see Ed Coolidge and ask his permission to go to his house that evening?

A Do you mean did I see him and did I make it a point to ask him?

Q Yes.

A No, I don't believe I did.

Q I am curious. If you wanted to talk with Mrs. Coolidge, why you didn't call her and ask her to come to the station or say you would see her the next morning.

A There was no pressing need for her to come to the station, she being a woman and having a child. We had a car and we went to the home.

Q As a convenience to her?

A Yes.

Q I mean there was nothing pressing; you were not afraid that she would run away, or anything like that?

A No, no.

Q If there was nothing pressing, couldn't you have asked her to come down the next morning?

A Well, we were working on the case, and the time element couldn't be interrupted; it more or less followed in sequence, and Mrs. Coolidge followed in.

Q If the time sequence ended at about three o'clock in the morning, would you have gone to the house then?

A Well, possibly we would have, due to the urgency of it.

[fol. 47] Q But he wasn't arrested for the Pamela Mason case until three weeks later—February 19th? Isn't that so?

A Yes.

Q And this was on February 3rd?

A Yes.

Q Did you see the child?

A No. I believe the child was in bed.

Q Do you know how old the defendant's wife is?

A No, I don't know how old she is—not offhand. She is a young girl—younger than I am—and in her twenties, I believe. I really have no idea.

Q Where did you have this discussion with her?

A In the living room. She asked us to sit. She made coffee for us. She made a pot of coffee.

Q You were in plain clothes?

A In plain clothes, yes, sir.

Q So I understand that at ten-thirty you knocked on the door, she invited you in, her mother was there,—

A Mother-in-law.

Q Her mother in law, you made it clear that you would prefer to discuss this matter with her alone; the mother-in-law went home—somebody came and picked her up, and then you discussed the case?

A Yes, sir.

Q You asked to see the pants, or something like that, [fol. 48] and you were shown some clothes and weapons, and that was about it?

A That is the substance of it.

Q And when you left at eleven-thirty that evening you took some items with you?

A That is right.

Q What items did you take with you?

A You want me to read this?

Q If it refreshes your recollection, you may read it. I can make it easier. This appears to be a receipt?

A That it what it is.

Q It is signed "Inspector D. Glennon, Manchester, P.D." Is that your signature?

A Yes; it is my handwriting in full.

Q Now will you tell the Court what you took that evening?

A One Palimino model 400 twenty-two—do you want the full or the abbreviations?

THE COURT: Couldn't you just ask if he took all that are listed there?

Q This list is one Palimino model 400 SSR rifle?

A Yes.

Q You took that?

A We were given it.

Q This is what?

A One sixteen guage Remmington shotgun.

[fol. 49] Q Without going into all the details this is a Marlin—is that a shotgun?

A No. That would be a thirty-thirty rifle.

Q And this?

A One 410 guage shotgun.

Q Mossberg & son?

A Yes.

Q Red jacket?

A Yes; one red jacket.

Q One pair uniform trousers?

A Yes.

Q What does this say?

A I have received the above items from Joanne Coolidge for examination."

Q And you gave her this prior to your leaving there at approximately eleven-thirty?

A Yes. Somewhere around there.

MR. REYNOLDS: I would like to have this marked as an exhibit.

(Receipt given Mrs. Coolidge marked Defendant's Exhibit H)

Q Inspector, on the night of February 2nd did you or did Detective Sergeant McBain take any items from the house or from the cars? By "items" I mean anything—scrapings or anything other than is on this Exhibit H?

[fol. 50] A From the house or cars?

Q Any place at all around the property, including his cars.

A Yes. We took from his car two items, I believe—one was a box of twenty-two shot, calibre ammunition, and one pair of trousers from the trunk of the car.

Q Could you tell me which car?

A The Pontiac.

Q Both came from the Pontiac?

A Yes.

Q Trunk?

A No; the ammunition was found in the glove compartment and the trousers were found in the trunk of the Pontiac.

A At eleven-thirty you said "Good-bye" to Mrs. Coolidge and went out to the cars?

A After asking her permission to do so.

Q You went to the cars?

A Yes.

Q Did you go back to the house?

A I believe Detective Sergeant McBain did. I didn't.

Q You didn't add these things to the receipt?

A I didn't. Of course, I didn't go back in the home.

Q Was there any reason why you didn't add them to this receipt?

A It didn't seem of importance; it was just part of the routine.

Q As a part of the routine, as you say, if you see [fol. 51] something you think might help, you take it?

A Yes; with permission, of course.

Q You are not saying that you had permission from Mrs. Coolidge to take these things out in the car without telling her about it?

A I assumed that the sergeant might have told her when he went to the door. I left it there.

Q In your business you claim that you give receipts, but you don't know whether Detective Sergeant McBain did or not?

A In this case, taking the four guns, I thought that it was advisable to take these, yes.

THE COURT: Four guns?

MR. REYNOLDS: Yes, Your Honor, four guns, a red jacket; and in the list there is a gun charged as being the alleged murder weapon.

Q Now, Inspector, this is the first time that you were ever at the Coolidge house?

A That is right.

Q And you can't think of anything else other than the receipted items, the trousers and the shot?

A To my knowledge I had nothing to do with taking anything else out of the house.

Q Did you observe Detective Sergeant McBain take anything other than what is listed on the receipt or that you found in the cars?

[fol. 52] A No, sir.

Q What did you do with these items when you got back to the station?

A Took them upstairs, laid them on the desk, and they were tagged.

Q I assume these items are still at the station?

A They were turned over to another party.

Q Did you turn them over to Captain Stipps?

A Yes; by us to Captain Stipps, and I believe he gave them to another party.

Q But you made your reports to Captain Stipps of all your events of the day?

A I believe, that was pertinent.

Q Mr. Coolidge was arrested February 19th, some seventeen days later?

A Yes.

Q Were you in on that?

A Yes, in a way of speaking I was involved with—not with, but I was at the station when he was brought in.

Q Did you go to his house the night he was arrested?

A No, sir.

Q Did you ever go to the house that night? I understand even after he was back in the station certain police stayed in the house all night.

MR. BUSSIERE: I think in the scope of the hearing [fol. 53] now being held this is immaterial. This is in a desire to save the Court's time.

THE COURT: What is the materiality?

MR. REYNOLDS: I want to get back into an item on the inventory and the warrants.

(No answer)

Q Did you at any time go back to the house and look the house over after February 2nd?

A No, sir.

Q You never went back there yourself?

A I never went back there myself. No, sir.

Q Inspector, it is fair to say that the items that you gave the receipt for and the other items taken from the car on February 2nd were all related to your investigation of the Mason case?

A As far as I am concerned, yes.

Q And had nothing to do with the Cote case?

A Pardon?

Q None of these items that you have listed had anything to do with the Cote larceny case?

A No, sir.

MR. REYNOLDS: That is all I have. Thank you very much.

CROSS EXAMINATION BY MR. BUSSIERE:

Q Inspector, did you look through the house for any weapons?

A No, sir.

[fol. 54] Q How did you happen to obtain any weapons?

A Well, we had been talking to Mrs. Coolidge, and told her most everybody who had been questioned about the Mason case, we were taking items for examination—such as guns and so forth. She stated that they had four guns in the house.

Q Inspector, as of the time she stated that, did you know the type calibre or type of gun that had been used to kill Pamela Mason?

A I knew of the calibre, but right now I can remember—it was twenty-five-point-something or other. I can't remember now.

Q You knew what—

A We were looking for a small calibre gun of some sort.

Q Were you looking for any particular type?

A Primarily, a rifle.

Q Or a handgun?

A Anything like that, yes.

Q You interviewed many persons in the course of your investigation of the Pamela Mason case?

A Yes. Very often.

Q Did you take any firearms?

A Yes.

Q Why?

A To ask if it was all right with them to take them [fol. 55] to the station for a ballistics test.

Q As far as the firearms in the Coolidge home, who got them from where they were?

A Mrs. Coolidge got them from the closet.

Q Did she say anything when the firearms were asked for for examination?

A She said that they had four guns in the home.

Q Did she say anything else?

A After telling her about the examination of guns and so on, she said she had nothing to hide and she had no objection to our taking them along for tests.

Q As a matter of fact, didn't she want you to take them?

A Yes.

Q Was the same type of conversation had with respect to the red hunting jacket and the one pair of trousers that came out of the house?

A That is right. She had no objection to our having them.

Q How would you describe Mrs. Coolidge's attitude toward you?

A Yes. She was a very, very nice woman. She made coffee for us, and was very co-operative.

Q She was anxious to clear her husband?

A Absolutely.

MR. DEVINE: Just a minute. I move that that be stricken.

THE COURT: It may be stricken.

[fol. 56] Q Would you describe her attitude?

THE COURT: He has already said she was co-operative.

A She was very co-operative.

Q Would you tell the Court the manner in which she was co-operative?

A In handling the guns, she asked us to take them along and had no objection whatsoever. She made us coffee, and she indicated to me that she was a very nice and very co-operative woman.

Q Just going back to a few general questions about your booking procedure and arrest procedure, when a person is placed under arrest do you take his property from him?

A Taking a general case?

Q General procedure.

A In a general case when a person is arrested he is brought before the booking cage, and he is asked these questions—name, address, date of birth, and then the items are taken from him by the houseman.

Q What is done with the articles?

A They are placed in an envelope and placed in the desk.

Q When were the articles taken from him?

A Immediately after the questions of the officer in charge.

Q When you were at the station was Edward Coolidge free to come and go as he pleased?

A Yes, he was.

[fol. 57] Q Was he in a cell?

A No.

Q Was he free to go where he wished?

A Yes, as far as I was concerned he was.

Q Did he leave at any time to go anywhere by himself?

A Yes, he did leave to go to the bathroom.

Q How would you describe his attitude?

A He was very co-operative.

MR. BUSSIÈRE: That is all.

MR. REYNOLDS: If the Court please, I understand the State has the booking sheet?

MR. BUSSIÈRE: Yes; I represent this is the booking sheet of February 2nd and February 3rd, Your Honor.

THE COURT: We might as well take a recess while you are looking at them.

(Recess 3:35 to 3:55 p.m.)

MR. BUSSIÈRE: May it please the Court, I believe counsel have had an opportunity to examine the booking sheets of February 2nd and February 3rd of this year.

MR. REYNOLDS: Yes, Your Honor. I would like to have this police blotter marked as an exhibit.

MR. BUSSIÈRE: Your Honor please, it adds nothing [fol. 58] to what is already in evidence.

THE COURT: What has it got that hasn't been introduced? Nothing at all. I thought it had been agreed the time was from one p.m. on.

MR. REYNOLDS: That is all right. I think he said it was quarter of one when he got to the station and Coolidge was there then.

THE COURT: I don't see that that adds anything to what is already in evidence.

MR. REYNOLDS: All right, Your Honor.

REDIRECT EXAMINATION BY MR. REYNOLDS:

Q I have just a couple more questions, Inspector, with regard to lie detector Sunday, February 2nd.

A Yes.

Q These shells were, you say, taken out of the glove compartment of the Pontiac?

A Yes, sir.

Q Were they loose or were they in a box?

A They were boxed.

Q They were empty shells?

A No; loaded shells.

Q And they were twenty-two calibre?

A They were twenty-two calibre.

Q Did you pick up any other shells that evening—empty shells?

A I would say no. I don't believe I did, no. It was [fol. 59] just the box. I am pretty sure that is all there was.

Q Did you look for any shells in the house in the area where the rifles were found?

A No, sir. We didn't look for anything in the house.

Q I understand as a matter of routine you were going around to homes looking for—

A Guns.

Q Guns and other things—small calibre rifles?

A Guns. Primarily guns.

Q You told Mrs. Coolidge, as a routine matter, that you were looking for these things and wanted to take them to the station and check them out?

A Yes. With permission.

Q She told you he had guns?

A Yes.

Q You were aware that he had guns?

A Yes. Four.

Q You knew that before you went there?

A I don't believe I knew he had any guns, no.

Q It didn't come out in your questioning from one o'clock?

A The questioning was not relative to guns. No.

Q As I understand it, it was your believe that at any time from quarter of one on, when you first saw Edward Coolidge, until two o'clock in the morning he could go home?

A He could have gone if he wished.

[fol. 60] Q You just didn't think to drive him to his home at ten-thirty that evening?

A No; no, sir.

THE COURT: How did he get there?

WITNESS: He came in his own car.

THE COURT: How did it get back to his house then?

MR. REYNOLDS: I think we can show that some time in the afternoon Mrs. Coolidge went to the station and brought his car home, so that both of their cars were at the home, Your Honor.

WITNESS: Yes, both of the cars were at home.

MR. REYNOLDS: That is all I have.

THE COURT: Anything further?

MR. BUSSIÈRE: No.

MR. REYNOLDS: We would like to call Detective Sergeant McBain.

[fol. 61]

TESTIMONY OF WILLIAM P. McBAIN

Sworn by Mr. Reynolds; direct examination by Mr. Reynolds:

THE COURT: May we confine the questioning of the sergeant to the visit to Mrs. Coolidge's house?

MR. REYNOLDS: With one exception, Your Honor, —some questions about the lie detector tests.

THE COURT: Well, I am not concerned with the lie detector tests today, am I?

MR. REYNOLDS: I think in the lie detector test the question was asked, "Do you know of any previous unsolved crimes?", and at the time Edward Coolidge said, "Yes, a oCte larceny that I am involved with."

THE COURT: You mean from then on he was under detection.

MR. REYNOLDS: Yes.

Q May I have your full name and occupation?

A William P. McBain.

Q Your position?

A Detective sergeant with the Division of State Police.

Q You have been with the State Police for how long?

A Twenty-four and one-half years.

Q At some point you were requested by the Attorney [fol. 62] General's office to assist the Manchester police force in investigating the Pamela Mason case?

A Yes.

Q One of your duties is giving lie detector tests?

A Yes.

Q You are the only one of the force which does that?

A No. There is another operator—Major Grey.

Q When was the first time you saw the defendant?

A I will have to go back to 1960 for that answer.

Q I won't go into that then, because we are confining it to this time.

A February 2nd, the afternoon, on Sunday.

Q That was when Officers LeClair and Glennon arrived at the State Police Headquarters?

A That is correct.

Q For the purpose of your giving him a lie detector test?

A Yes.

Q You made a report and all that, I assume?

A Yes, I did.

Q How long was he in taking this lie detector test?

A The actual test, as far as the machine being in operation, wouldn't take longer than fifteen or twenty minutes.

Q Now, you asked him a number of different questions, I understand, and looked at the impulses to see if you were getting a reading which will tell you something?

[fol. 63] A Yes.

Q Can you give an example of some of the standard questions that you asked on the test?

MR. BUSSIERE: Your Honor please, I don't know that this is material.

THE COURT: No; I don't either.

MR. REYNOLDS: I will strike it.

THE COURT: I am a little troubled, getting into this field. Well, you are withdrawing the question anyway?

MR. REYNOLDS: I will withdraw that.

Q At some time,—at some point that Sunday afternoon while you were with Edward Coolidge up in Concord, did something about a larceny—Cote larceny—come up?

A Yes.

Q Can you tell me what you claim came up and what was said?

A Well, all questions which are going to be asked on the machine are gone over with the subject taking the test before-hand, and one of the question I asked him was how he was going to answer, "Have you ever committed a serious undetected crime?" To which he answered, "Yes. A robbery." And then he went on to explain the larceny from the Cote Bakery.

Q And that is how it came out? Is that right?

A That is right.

Q Then you reported this to either Inspector Glennon [fol. 64] or Officer LeClair?

A I did.

Q Did you drive back with them to Manchester?

A No.

Q At some point, around six or so in the evening up in Concord, Edward Coolidge had admitted to you committing a larceny?

A Correct.

Q Sometime later on you came to Manchester?

A I did.

Q What time was that?

A I would say it was approximately eight-thirty or nine o'clock that evening.

Q And at that time did you see Edward Coolidge and question him, or sit in while the questioning was going on?

A No. I first called Captain Stipps, who was at his home, and we arranged to meet at the Manchester police station.

Q Was the purpose of your coming to Manchester and calling Captain Stipps to arrange your discussing Edward Coolidge and the Pamela Mason case?

A Yes. Also, I would like to add to that—also further investigation of the Cote larceny.

Q When you left Inspector Glennor and Officer Le-Clair, you had told them about the larceny?

A Correct.

Q Had you told them to check it out, or suggested [fol. 65] that they might do that?

A No, I did not.

Q In any event, you met Captain Stipps in Manchester around nine o'clock to discuss Edward Coolidge, Pamela Mason, and the larceny?

A Yes.

Q Did you question Edward Coolidge at all that evening?

A Yes, I did.

Q When did you start talking with him?

A Well, it was after we got back from talking with his wife.

Q All right. The first time you talked with Edward Coolidge after Concord was after you had seen his wife?

A There was some conversation between us after the test.

Q But no conversation in Manchester until after you saw his wife?

A Yes. Correct.

Q You went over what he said with Inspector Glennon?

A Yes.

Q And you said there were some things you wanted to check out, and you were looking especially for small calibre rifles and so on?

A There was no special intention on my part to look for some firearms, if that is what you mean.

Q It came to your attention that he had some firearms in the house, you asked to see them, and you were shown them?

A Yes. After a statement was made to Mrs. Coolidge [fol. 66] that other suspects in this Mason case were being questioned, and whenever firearms were brought out they were asked if they could be tested.

Q Was it you who decided to go over to the house with Inspector Glennon, were you ordered to, or how did that work out?

A I think Captain Stipps assigned Inspector Glennon to go over with me.

Q As a result of conversation with Captain Stipps you thought it was a good idea to go over there that night?

A Yes.

Q Rather than call and asked her to come to the station?

A Yes.

Q Was there any special reason you had to see her that night? Was there any—

A No, but I wanted to futher the investigation by confirmation which only she could give.

Q So your going over had nothing to do with the Mason case?

A Oh, yes it did.

Q But incidentally you wanted to check out a feature of the larceny case?

A That is right.

Q Inspector Glennon suggested you were shown certain things and took certain items, and in addition you went out and inspected the cars?

A That is right—with the permission, and with the [fol. 67] keys which were given to us by Mrs. Coolidge.

Q She gave you the keys and you went out and looked in both cars?

A Yes.

Q Looking in the glove compartment, the trunk, and so forth?

A Yes.

Q Was it you or Inspector Glennon who found the twenty-two calibre shot?

A I found the twenty-two calibre shot in the glove compartment.

Q And you took those?

A Yes.

Q And was it a pair of trousers?

A I found a pair of trousers in the trunk.

Q And took those?

A Yes.

Q Did you bring them into the house?

A When I brought back the keys and the interview was about to finish, I went back to Mrs. Coolidge and told her that we were taking a box of twenty-twos and another pair of pants.

Q Where was that? Where were you standing when that took place?

A In the kitchen.

Q You went back in the house?

A Yes.

Q Was Inspector Glennon with you?

[fol. 68] A No. He was outside.

Q Did you see Inspector Glennon give her a receipt for these other items?

A No.

Q Did you tell her that you were going to return them tomorrow, or sometime?

A I didn't say a date, no. I said that they would be returned when we were finished.

Q Did you take any other items from the house, property or cars, other than those that are listed? I show you Defendant's Exhibit H, which is Inspector Glennon's receipt listing these various items. Do you know of anything else which was taken that evening?

A Yes. A recall a single glove.

Q A single glove?

A Yes, a single glove which was found in one of the cars, but I am not sure which car it was.

Q Where in the car? Back seat? The trunk?

A I think it was found in the back seat.

Q What material glove? A leather glove, a mitten, or—

A I think it was a brown furry substance, which could have been partly leather, too.

Q Left hand or right hand glove?

A I don't recall.

Q What did you do with these items?

[fol. 70] A They were brought to the Manchester police station and turned over to Captain Stipps.

Q Did you make a report about the events of that evening, what was taken, your conversation with Mrs. Coolidge, and so forth?

A Yes; in conjunction with Inspector Glennon.

Q And in that report I suppose you itemized again the items which you took—the glove, and so forth?

A I believe so, yes.

Q All right. Can you think of anything else—trousers, glove, and a box of twenty-two caliber—over and above what is on the receipt list?

A I am not clear as to whether another hunting jacket was taken. We were shown two hunting jackets, and whether the other one was taken or not, I do not recall.

Q Talking about clothing, in addition to the two pair of trousers and maybe one or two jackets, were there any other items of clothing?

THE COURT: Why don't you let him see that? It might refresh his recollection.

MR. REYNOLDS: The word here is "toque", which I didn't know what it was until recently.

THE COURT: To me it is a cap.

Q Was it a stocking cap or some kind of hat?

A I don't recall any kind of cap or hat.

THE COURT: Maybe I am wrong. Isn't a toque a [fol. 71] cap?

WITNESS: Yes, it is.

MR. REYNOLDS: I am referring to Defendant's Exhibit G. What is a toque?

MR. KALINSKI: I have the same understanding as Your Honor has. That is what was reported to me and what I put in the letter.

THE COURT: Perhaps the State will be helpful and tell you what if anything else was picked up, other than what these two gentlemen have testified to.

MR. KALINSKI: I don't think so, Your Honor.

MR. REYNOLDS: Seems to me we have a missing toque, Your Honor.

THE COURT: Seem sto me it is a toque that nobody knows where it came from.

Q Did you go back to Seames Road, to the Coolidge home, at any time other than this night?

A Yes. We went back later with a search warrant.

Q That was the day he was arrested, or the day after?

A The day after, yes.

Q At that time you didn't pick up any hat?

A Well, of course there was a group there.

Q I mean you don't recollect picking up a hat yourself?

[fol. 72] A No, I don't.

MR. REYNOLDS: That is all. Thank you very much, Mr. McBain.

THE COURT: Do you have any questions?

MR. REYNOLDS: Oh, I have just one more.

Q I want to make absolutely sure. Your recollection is that you didn't see or didn't take anything other—whether it is clothing or not, or whatever it is—other than these items which are on the receipt, plus the items you have already told us about?

A Not to my knowledge now.

Q Well, there is a record some place—

THE COURT: May I inquire at some point, when you bring in things does someone make a list of them?

WITNESS: That would have to be answered by one of the Manchester officers. You might be referring to a small knife which I recollect might not have been included in this list.

Q Are you referring to finding a knife?

A In the glove compartment of the car.

Q On February 2nd—Sunday night?

A Yes.

Q That is the glove compartment of what car now?
[fol. 73] A The Pontiac.

Q Did you take that?

A It is not on the list.

Q Forgetting the list, do you remember taking a knife?

A I remember finding it, but whether I took it or not I don't know.

Q All right. What kind of a knife?

A I would call it a paring knife.

Q Paring knife, trousers, a box of shells, a glove—plus these things, on this list. Anything else?

A Not that I recall.

Q At any rate, you did make a list of the things you and Inspector Glennon took, and you put it on a report which you and Inspector Glennon signed?

A I believe so, yes.

Q You both signed it?

A No. I believe Inspector Glennon made it out and I looked at it.

Q Did you sign it?

A No.

Q Did you make out any report as to your activities on February 2nd, 1964?

A As to the conversation with Mrs. Coolidge I did make a report.

[fol. 74] Q Was your report stapled to Inspector Glennon's, or was it a separate report?

A It was a separate report.

Q Who did you make your report to?

A That would be to Colonel Regan, who would send it to the Manchester police.

Q You didn't turn it over to Caption Stipps; your chain of command was Colonel Regan?

A That is right.

Q And he might or might not have turned it over to Captain Stipps?

A That is right.

MR. REYNOLDS: Thank you very much.

CROSS EXAMINATION BY MR. MAYNARD:

Q When you went down to the house that evening to see Mrs. Coolidge, you had some matter that you wanted to corroborate or clear up, as a result of your talk with Mr. Coolidge?

A That is right.

Q Will you tell us what your reason was for having a desire to go down to see Mrs. Coolidge?

A When Mr. Coolidge explained to me about the larceny of money from the Cote Bakery, I inquired how he did it and what he did with the money. He told me that he had bought his wife a washing machine. That was one of the reasons I went down, to confirm that with Mrs. Coolidge—which she did confirm.

[fol. 75] Q When you went down, did you and Inspector Glennon go to the house at the same time?

A Yes.

Q Did you knock on the door?

A Yes.

Q Would you tell us what was said when your knock was answered?

A Mrs. Coolidge came to the door. We identified ourselves and told her we would like to talk with her, if possible.

Q What did she say to that?

A She invited us in.

Q When you went in, who was there?

A It would be Mrs. Dorothy Coolidge—Edward Coolidge's mother.

Q As well as his wife?

A Yes.

Q Did you go in the front door?

A It was the side door, which lead to the kitchen.

Q After you went in were you asked to be seated?

A Yes.

Q Did you sit in the kitchen or in another room?

A We sat in the living room.

Q Was the living room off the kitchen?

A Yes.

Q Did you at some time go into the bedroom?

A Yes, at a later time I did.

[fol. 76] Q While you were there Mrs. Coolidge made you some coffee?

A Yes, she did.

Q How would characterize her attitude toward you and Inspector Glennon?

A She was very co-operative.

Q I am speaking of Mrs. Coolidge, the wife?

A Yes.

Q Did you talk with Mrs. Coolidge, Sr.?

A Just a few questions.

Q What was her attitude?

A I will have to say that she interrupted our line of questioning in the first place.

Q That is when somehow or other it was made apparent to her that you wanted to talk to the younger Mrs. Coolidge alone?

A Correct.

Q How long after you arrived there and started talking with the Coolidge ladies was it that the senior Mrs. Coolidge left?

A I would say between ten and fifteen minutes.

Q How long were you in the house all together?

A I would say we arrived there at ten-thirty and left around eleven-fifteen or twenty.

Q While you were there did you search the premises?

A No.

MR. REYNOLDS: I object. This is a pretty legal word. I think the facts speak for themselves as to what [fol. 77] rooms they may have gone into or didn't.

THE COURT: I think it is clear, as I understand their previous testimony, that they took nothing from the premises—not including the two cars—but what was brought to them by Mrs. Coolidge. Am I correct there?

WITNESS: That is correct.

THE COURT: And that they did not leave the room that they were in for the purpose of getting anything. Is that correct?

WITNESS: There was one instance where Mrs. Coolidge did go into the bedroom. I think that was with regard to the hunting jacket or the trousers—the uniform trousers.

THE COURT: Did you follow her into that room?
By "you" I mean you and/or Inspector Glennon.

WITNESS: Yes.

Q Did you look into the closet, or feel around?

A Oh, no.

Q Did you look around any of the other areas of the house, except where you were invited?

A No.

Q In taking the hunting jacket, did you go through [fol. 78] the pockets of the hunting jacket?

A No, I didn't.

Q You couldn't say if there was anything in the pockets or not?

A No.

Q Were you looking for any particular firearm at the house?

A No, sir.

Q When you went to the house did you go to obtain any firearms?

A No.

Q When you went into the bedroom, were you requested to go, or did you just follow Mrs. Coolidge?

A I would say that Mrs. Coolidge, in getting the things, said—invited us to come along. She would point out a pair of trousers and say, "Would this be anything you are looking for?"—in that general vein.

Q Did you ask at some time about looking in the automobiles?

A Yes.

Q How did that come about? Who asked, and what if anything did Mrs. Coolidge say?

A I told Mrs. Coolidge we would like to look over the cars. She used the expression, "We have nothing to hide. Here are the keys. Go ahead and look them over as much as you want."

MR. MAYNARD: I have nothing further.

REDIRECT EXAMINATION BY MR. REYNOLDS:

Q I understand, however, that you were over there looking for items—firearms and what have you?

[fol. 79] A Only when it was suggested to Mrs. Cool-

idge that we were checking on firearms, and did they have any.

Q None of the items that you were looking for had anything to do with the Cote larceny?

A That is true.

Q You went over there looking for a washing machine?

A That was only one reason.

Q Didn't you believe Edward Coolidge when he told you he had committed this larceny?

A Yes, I did.

Q As of six o'clock that evening you were satisfied that he had committed the larceny?

A But there was no corroboration by another party, which could have been done.

Q All items taken that night, I understand, had to do with the Pamela Mason case—the four guns and all the other items? None of them had to do with the larceny?

A Well, we didn't take the washing machine.

Q Answer my question. None of the things you took had to do with the larceny?

A No.

Q You went back to the station after that and questioned him for a while?

A Yes.

Q Were you present while he had something to eat?

[fol. 80] A Yes. He was brought in sandwiches and coffee.

Q What time was that? Between eleven and twelve?

A I would say it was around midnight.

Q When you arrived, Mrs. Coolidge, Sr. was there. When you questioned Joanne Coolidge, she interrupted, as I understand it?

A Yes.

Q In some way or other, the Attorney General says it was made clear to her that she should leave. Did you ask her to leave?

A I would like to make an explanation as to that. When we talked with young Mrs. Coolidge, we inquired whether we should talk to her in the presence of her mother-in-law. She intimated, "Go ahead; anything told

to her mother-in-law was all right with her." Then we started to question Mrs. Coolidge about her husband's activities on the night of January 13th. Mrs. Coolidge, Sr., or the mother-in-law, then made some statement or interruption.

Q So you asked her if she would kindly leave?

A Well, it wasn't put as bluntly as that, but that was the general inference, yes.

Q Well, tell me how you put it.

A I think we said something about we could come back later when Mrs. Coolidge was alone.

Q Isn't it true that you could have come back the next morning very easily?

[fol. 81] A Yes, I suppose we could have.

Q You knew that this lady had a very young child that might have been a year and a half old?

A Yes.

Q The child was in bed, she was alone, and she was a young lady?

A Yes.

Q It was fairly late at night, and her husband—you knew—had been gone at least from one o'clock on?

A That is correct.

Q By the way, when you did go over there Inspector Glennon did tell Mrs. Coolidge, "Well, we don't know whether or not your husband will come home tonight."?

A Yes.

Q Didn't she inquire where her husband was?

A Yes; and out of courtesy we told Mrs. Coolidge that it was very possible that he would be detained in the station that evening.

Q But whoever it was hadn't made up their mind? Is that right?

A Well, I believe it was Captain Stipps who have had to be consulted in that respect, yes.

Q You didn't say, "Your husband is being held at the station on an arrest under a charge of larceny."?

A No.

Q Because he wasn't arrested, was he?

A Not at that time.

[fol. 82] Q Well, not until much later?

A That is right.

Q So you said, "Your husband is in the station, still being questioned on the Mason case."?

THE COURT: I believe the previous phraseology was that her husband was being detained.

MR. REYNOLDS: Detained. I am sorry.

A That is right. I don't believe there was any specific case mentioned—whether it was the larceny case or the Mason case.

MR. REYNOLDS: I have no more questions, thank you.

MR. MAYNARD: I think Your Honor's recollection of what Sergeant McBain said is different than my recollection.

THE COURT: All right; let's have it read. Go back two or three questions.

(Record checked and read)

MR. MAYNARD: I think the sergeant said that they were going to detain him until after Captain Stipps made up his mind whether there was a case.

THE COURT: Let's ask the sergeant then.

[fol 83] WITNESS: That is what was in my mind—that it was very possible that he would be detained when we got back with this information.

MR. REYNOLDS: One more question then.

Q He wasn't under arrest when you went to Mrs. Coolidge's house?

A Not to my knowledge.

Q Not to your knowledge. And you had just left Captain Stipps, who was in charge of the investigation?

A Yes.

Q It was your understanding that he was free to go at any time?

A Yes. We knew who he was, and I think if he had to be picked up we could do it very easily.

Q There was no fear that he would flee the country?

A No. In fact, he made an appointment to come back to see me the following Sunday.

Q You felt that he was satisfied to be in the station all this time?

A I can't answer that. He wasn't in the station all the time.

THE COURT: Did he ever ask to go home at any time and come back at any time when you talked with him at the station?

WITNESS: No.

Q When you were at the station did you or did any-
[fol. 84] one in your presence say to Edward Coolidge,
"Ed, any time you want we will drive you home."?

A No; I wouldn't say that.

Q Did you ever hear anyone, in your presence, say that to him?

A No.

MR. REYNOLDS: That is all.

MR. MAYNARD: We have no further questions.

TESTIMONY OF JOHN A. STIPPS

Sworn by Mr. Graf; direct examination by Mr. Graf:

THE COURT: Tell me—I have seen the rather lengthy deposition. Are you possibly going to ask Captain Stipps anything not asked in the deposition?

MR. GRAF: Just one or two things. I don't believe I will be very long with the captain, Your Honor.

Q Will you state your name and address?

A John A. Stipps, 659 Hanover Street, Manchester, New Hampshire.

Q You are a police officer?

A I am.

Q Captain?

A Yes.

[fol. 85] Q In charge of the detective division?

A Yes.

Q On January 21st—was that the date the office of the Attorney General and the County Attorney took over control and direction of this case?

MR. BUSSIÈRE: I object. I don't believe that has anything to do with the issue now, Your Honor please.

THE COURT: Yes; unless you agree that the Attorney General had control of the case at the time of the

issuing of the warrants. Do you agree that he was in complete charge at the time of the issuance of the warrants?

MR. BUSSIERE: We do agree that the Attorney General had general supervision of the case.

THE COURT: And that he was chief investigating office at the time he, as magistrate, issued the warrants?

MR. MAYNARD: The representation I would make is that I had general supervision over the investigation prior to the time of the finding of the body and at all times after that.

THE COURT: I think that is satisfactory.

Q We talked last June at some length about police procedure, in regard to the records? Do you recall that? [fol. 86] A Yes.

Q As I recall the situation, all records went to you at the first and were made available to the office of the Attorney General. Is that correct?

A Yes.

Q Pretty much from January 21st or up to February 19th, the date of arrest, you had pretty much daily conferences—yourself and other investigating officers of the Manchester Police Department and the office of the Attorney General and the County Attorney?

A You said daily?

Q Daily conferences.

A Well, we had conferences. How often, I can't tell.

Q You had one at least once a week? Is that fair to say?

A It is possible.

Q It is probable?

A Yes.

Q The conferences had to do with the progress of the investigation of the case?

A Yes.

Q And Mr. Maynard was a party to those conferences?

A Yes.

Q Calling your attention to January 28th, did you instruct Sergeant Doyon of the state police and *Inspector LeClair* of your department to go to the Coolidge home?

[fol. 87] MR. BUSSIERE: We object, Your Honor please, and feel that that is immaterial to the issue being tried before the Court.

THE COURT: I don't understand the purpose of this.

MR. GRAF: There has been some reference here, and I think the facts of the situation are that on the 28th Captain Stipps instructed two police officers—and I believe it was just two police officers—to go to the Coolidge home, at which time they were shown various items.

THE COURT: I don't see that it makes much difference. There is no claim by the prosecution as I understand it that the acts of Sergeant McBain and Mr. Glennon were not authorized as a part of the investigation. I don't see the point otherwise.

MR. GRAF: The point is solely the fact that the Manchester Police Department here allege that on Sunday, February 2nd certain firearms were in the possession of Mr. Coolidge.

THE COURT: Oh, you mean before they went there?

MR. GRAF: Yes, before they went there.

THE COURT: You may ask that.

[fol. 88] MR. GRAF: I will ask generally. Strike the question.

Q Prior to February 2nd did you have personal knowledge of the fact that Mr. Coolidge owned shotguns and rifles?

A I was aware of the fact that he owned a Remington shotgun, a 410 shotgun and a thirty-thirty rifle, and that is all.

Q Calling your attention to February 2nd—Sunday, February 2nd, sometime in the evening there has been testimony that Mr. Coolidge returned from Concord. Do you recall that testimony?

A Yes.

Q At some point in the evening did you in fact instruct Detective Sergeant McBain and Inspector Glennon to go to the home of Mr. Coolidge?

A Yes. Let's say we had a conference and the three of us thought it would be best that they do it.

Q My point is, it was your suggestion that they go to the Coolidge home?

A Yes.

Q Was this at the instruction of any member of the Attorney General's staff or the County Attorney's staff?

A No.

Q They did not suggest this to you?

A No.

Q By the way, did you or any of the men subject to your control inform Mr. Coolidge that they were going to the house?

[fol. 89] A I don't recall if Sergeant McBain had informed him. I don't know.

Q And, Captain, again referring back to your deposition, do you recall at some point in the day Mr. Reynolds started asking you some questions?

A Yes.

Q Do you recall that?

A Yes.

Q Do you recall Mr. Reynolds asking you these questions—and I refer to page 154 question 691: "And do your records indicate that you told Mr. Coolidge that you were sending them there?" Your answer was, "No." Is that correct.

A That is the way I meant it now.

Q Is that what you said back in June?

A Yes.

Q The next question, "Did you tell Mr. Coolidge you were sending them there?" And your answer was "No." Is that right?

A It was "No".

Q So as far as you are concerned, you have no recollection of anyone telling Mr. Coolidge that the officers were going to the house?

A No.

Q Did you give these two officers any specific instructions?

A No.

Q Did you tell them to enter the house—gain entrance [fol. 90] to the house?

A Gain entrance to the house?

Q Yes.

A It is assumed if they went to see Mrs. Coolidge they would enter the house.

Q Did you appraise them if no one was at the Coolidge home not to enter the house?

A That is right; to come back.

Q If she wasn't home to come back?

A That is true.

Q But as long as she was at home you told them it was okay to go in?

A That is right.

Q And these two officers returned to the station at approximately eleven-thirty that evening?

A About.

Q And they brought with them the items which have already been referred to today?

A Yes.

Q And after they returned did you or any of the men under your control or subject to your control inform Mr. Coolidge that they had been to his house, if you know?

A I don't know.

Q You don't know. Earlier in the day, Mr. Coolidge returned from Concord—about six or seven o'clock in the evening?

[fol. 91] A Yes.

Q Isn't it a fact that when he got back from Concord he was not free to leave the station? He wasn't free to leave at that time, was he?

A If he suggested that he was going to leave, I might have—he might have been allowed to leave. He wasn't under arrest at that time.

Q Again let's go back to the deposition. Let me see if I can find this. Again referring to your deposition—page 148, Brother Maynard—

MR. MAYNARD: Do you suggest that the deposition will impeach the testimony he just made; or will it be like the last time—will it corroborate it?

MR. GRAF: I think it will show that at six o'clock or after six o'clock Mr. Coolidge's stay at the station was involuntary.

Q Question 169, "Could you explain?" Answer, "I knew he was there on a voluntary basis." Next question, "And at six did it become involuntary, shortly after six o'clock that night, six p.m.?" And you go on to say, "Why would it become involuntary at that time. The officers who conducted that investigation obtained a confession." Did I read those correctly?

A More or less.

Q Well, did I read them correctly?

[fol. 92] A I couldn't follow you. I don't know where you started.

Q I started up here. Those were the questions and the answers given, weren't they?

A I believe it was.

Q That is right. So as far as you were concerned, at six o'clock in the evening Mr. Coolidge's presence at the station was no longer voluntary? Isn't that so?

A It was voluntary up to this point.

Q After six o'clock it was involuntary?

A If he had asked to leave then it would have been necessary to book him for further investigation. We had not completed our investigation at six o'clock, but at that time I was aware that he would be charged before the night was over.

Q Do you mean to say after six o'clock that night if he had said, "Captain Stipps, I am going home", he would have been free to go home?

A Then I could have booked him for investigation.

Q One other thing. The confession you referred to related to the Cote larceny situation?

A That is right.

Q Captain, do you have a list or a record of those items which Detective Sergeant McBain and Inspector Glennon submitted to you upon their return from the Coolidge house on February 2nd?

A Yes.

[fol. 93] Q You have a list in court?

A I have a memorandum which I had written. I thought it over today. I had written down some of the items taken.

THE COURT: I am confused. Is this something you have written down today?

WITNESS: That is right.

MR. GRAF: I would like to see it.

THE COURT: I don't see how that would be helpful to us. We already have a list of the things which the State thinks—

MR. GRAF: I would like to see the official record, Your Honor.

THE COURT: That is what I mean; I don't see how anything that he did today would be helpful to us in this matter.

Q Do you have a record which was made on the day the things were brought in?

A Yes.

Q But you don't have that record with you now?

A No.

MR. GRAF: That is the record we would like to see, Your Honor.

THE COURT: I assume the State can furnish it. You are probably are interested in seeing it, too, unless [fol. 94] it is what is on the list that comes from Brother Kalinski.

MR. KALINSKI: I don't know what the witness is referring to.

THE COURT: We are all a little confused by the fact that there seems to be some things on this list which Sergeant McBain and Inspector Glennon didn't testify to picking up. I imagine it is a matter of their recollection, and that somewhere there is a record of what they brought back that day.

MR. KALINSKI: Yes, Your Honor.

THE COURT: Do you have any questions?

MR. BUSSIERE: One or two.

CROSS EXAMINATION BY MR. BUSSIERE:

Q Captain, Sergeant McBain testified that he called you at your home around nine o'clock that night?

A Yes.

Q Any reference which you made to anything which happened after six o'clock—is that something you have

personal knowledge of, or is it something you are guessing at?

A Yes. I might have gone home around seven o'clock, knowing an investigation of the larceny at the Cote Bakery was in progress. It was not completed, and as long [fol. 95] as we had a suspect who was willing to stay, as Mr. Coolidge was, there was no reason why he should have been booked.

MR. BUSSIERE: That is all.

REDIRECT EXAMINATION BY MR. GRAF:

Q After Mr. Coolidge returned from Concord, isn't it a fact that all the questioning or interrogating, or whatever you want to call it, related primarily to the Pamela Mason case? Isn't that the fact?

A Yes.

Q And the larceny case was incidental so far as you were concerned? Isn't that right?

A We thought the larceny case was not as serious as the Pamela Mason case, and we put more time on that than the other.

Q And the purpose in sending the officers to the Coolidge home on Seames Drive was primarily in connection with the Mason case?

A Well, not primarily with the Mason case. It was two-fold; the larceny case and the Mason case.

Q You said the larceny case was not so serious?

A I don't know what they did there. I assume it was with reference to both.

Q Well, in your sending them to Seames Drive that evening of February 2nd, at least one of the reasons for sending them there was for the investigation of the Pamela Mason case? Isn't that so?

[fol. 96] THE COURT: How much longer are you going to be?

MR. GRAF: Just one more question, Your Honor.

THE COURT: All right.

Q Again referring to your deposition, page 152 question 683—you read along with me and make sure I read it correctly—Mr. Reynolds asked, "I assume since he made this confession you considered this grand larceny

case solved as of six o'clock?" Answer, "Well, solved, yes." Next question, "Is it fair to say all the questioning which took place from six o'clock until three in the morning had nothing to do with the Cote case then?" Answer, "I would say that is possible." Were those questions asked, and were those your answers?

A Yes. That is right.

MR. GRAF: That is all.

THE COURT: Are you through now with Captain Stipps?

MR. BUSSIERE: Yes.

MR. GRAF: I am through with Captain Stipps. Thank you, Captain.

THE COURT: How much more do you expect to have in the way of testimony?

MR. DEVINE: I would say three witnesses, Your Honor.

[fol. 97] THE COURT: You have three witnesses?

MR. DEVINE: Yes.

THE COURT: Will you need Mr. Coolidge here tomorrow?

MR. DEVINE: No, I don't believe he will need to be here tomorrow, Your Honor.

MR. BUSSIERE: Your Honor, most of the officers are here under subpoena.

THE COURT: If they indicate which three they want, I assume you will produce them tomorrow morning?

MR. BUSSIERE: Yes, Your Honor.

THE COURT: All right. You do that. I assume that you can indicate which three you want, and also that Mr. Coolidge will not be here tomorrow.

I will see counsel in Chambers before you leave.

(Conference between Court and counsel in Chambers off the record)

SEPTEMBER 1, 1964.

THE COURT: You may proceed.

MR. GRAF: Thank you, Your Honor. Captain Stipps.

[fol. 98] CAPTAIN JOHN A. STIPPS resumes stand;
sworn by Mr. Graf, redirect examination by Mr. Graf:

Q Captain Stipps, just going back for a moment to February 2nd, Sunday afternoon did you have some occasion at some point in the afternoon—did Mrs. Coolidge come to the station?

A Yes.

Q At approximately what time did she arrive at the station, if you recall?

A Around three or three-thirty.

Q At the station she talked with her husband?

A Yes.

Q As she was about to leave, you also talked with her?

A Yes.

Q You asked her general questions?

A I spoke to her for about—oh, maybe four or five minutes.

Q And you spoke to her about what was the substance of her conversation with her husband?

A I don't recall exactly, but we did talk in general about what she had told her husband and what he had told her.

Q You also asked her about the family situation—whether she and her husband got along well, and things of that nature?

A Yes.

Q Did you also inform her that she should answer all of your questions?

[fol. 99] A I do not recall making that statement.

Q You don't recall it?

A I don't; but I imagine that was the purpose of talking with her.

Q You told her that if she didn't answer your questions she could be held as an accessory?

A I might have said if she was aware of any crime he had committed, and it turned out that she knew, it might be a little different.

Q You told her that she might be charged with a crime if she didn't co-operate with you?

A I don't believe I threatened her that way.

Q But you did threaten her?

A No, I did not.

Q But you did talk with Mrs. Coolidge about the possibility of her getting into some trouble with the police if she didn't answer questions?

A I might have inferred it, but I do not recall the words.

Q Moving on a little bit in time and focusing your attention on the events of February 19th—that was the date of the arrest?

A Yes.

Q Do you recall what day of the week that was?

A No.

Q Perhaps it was a Wednesday?

[fol. 100] A It is possible.

Q But in any event, on that particular evening you and a number of other police officers arrived at the Coolidge house with an arrest warrant?

A Yes.

Q The complaint on that arrest warrant was drafted by whom?

A By the Attorney General's office.

Q That is, Mr. Maynard? Do you know whether or not he drafted it?

A I don't know.

Q But in any event, you arrived at 312 Seames Drive on the night of February 19th?

A Yes.

Q At about seven-thirty?

A Seven-thirty; maybe seven-forty.

Q In that vicinity, give or take a few minutes?

A Yes.

Q As a matter of fact, Assistant Chief Leavitt was with you?

A Yes.

Q You and Mr. Coolidge, Mr. Leavitt and other officers, returned to the police station?

A Yes.

Q You got to the station at about eight o'clock that evening? Is that correct?

A Yes.

[fol. 101] Q And it was the next day that Assistant Chief Leavitt returned to the Coolidge home with the search warrant?

A Yes.

Q And that would be on February 20th? Is that right?

A Yes.

Q Now, do you recall approximately what time on the 20th this search took place?

A It might have been in the morning.

Q Sometime after eight o'clock in the morning, perhaps?

A Yes.

Q Perhaps before noon?

A Yes.

Q And do you know whether or not prior to this time period, or February 20th, any search was conducted by any police officers at 312 Seames Drive?

A There was none.

Q So that this was the first search of the Coolidge premises, with warrants?

A Yes.

MR. GRAF: I have no further questions. Oh, just a minute please.

Q Just one other thing. On the night of the 19th, the night of the arrest, you and other officers took Mr. Coolidge to the station? Is that correct?

A Yes.

[fol. 102] Q What happened to Mrs. Coolidge during this time?

A She was driven to her sister's home in Windham.

Q As a matter of fact, as you were at the house Mrs. Coolidge was trying to pick up things for the baby, and other items of that nature?

A No.

Q She didn't pack some clothes to take with her?

A Not while I was there.

Q But in any event, she was out of the house almost immediately as well?

A I wouldn't say immediately, but some time later she went to Windham.

Q Within half an hour after you left, isn't it a fact that Mrs. Coolidge was out of the house also?

A It is possible.

Q It is also a fact that you left two officers there to guard the premises?

A Yes.

Q And also on this evening, you changed the locks on the Coolidge house?

A That evening?

Q Yes.

A No.

Q When were the locks changed?

A A day or two later.

[fol. 103] Q But within a day or so the police officers changed the locks at the Coolidge house?

A Yes.

Q There were two officers left at the house on the night of the 19th. Who were these officers?

MR. BUSSIERE: Your Honor please, we object to this.

THE COURT: What is the reason?

MR. BUSSIERE: He is just fishing. This has nothing to do with the issue before the Court.

THE COURT: Is this a serious objection? Do you really care?

MR. BUSSIERE: Well,—

THE COURT: I will rule whichever way you want me to, Brother Bussiere.

MR. MAYNARD: Your Honor—

THE COURT: Do you want to insist upon your objection?

MR. MAYNARD: I think it is a very good objection, Your Honor.

THE COURT: All right. Objection sustained.

MR. GRAF: My exception, Your Honor.

Q How long were these two police officers at 312 Seames Drive?

[fol. 104] A Maybe an hour or two.

Q Weren't the officers left at the house all the evening? Weren't the officers there all evening?

A They were ordered out of the house.

Q Who ordered them out of the house?

A Indirectly, yes. The attorney didn't want them in there so we took them out.

Q These officers were inside the house?

A Yes.

Q Were there also officers outside the house?

A Yes.

Q Did they remain there?

A Yes.

Q If I understand you correctly, the officers inside the house were, by you, ordered or asked to leave the premises?

A That is right.

Q But two officers were left outside the house?

A That is right.

Q And they were there all the evening?

A That is correct.

Q Were they there all day on the 20th?

A I don't believe so.

Q But some time on the 19th—

A I think in the morning they were relieved of their duties.

[fol. 105] Q Didn't you in fact order Mrs. Coolidge to leave the house?

A I did not.

Q Did you suggest that she leave the house?

A I did.

Q You suggested that she leave the house on that night. Did you bring a list of the items taken from the Coolidge house and cars, and so forth, on February 20th with you today?

A No.

MR. GRAF: It was my understanding that the list of items taken on February 2nd was to be produced today.

THE COURT: You didn't mean the 20th?

MR. GRAF: No.

MR. BUSSIERE: Your Honor, the State has inquired into the situation. I believe in the course of the hearing that will be cleared up.

MR. GRAF: We would still like an opportunity, and reserve our right, to look at the original lists. We would like to look at the original list.

MR. BUSSIERE: I don't believe that there is a list as such. There are reports of the various officers. One has not been referred to yet; but it will be cleared up in the course of the hearing.

[fol. 106] THE COURT: All right.

Q Captain, Inspector Glennon and Detective Sergeant McBain were at the Coolidge house on the evening of February 2nd?

A Yes.

Q There was police procedure at that time in regard to the Mason case to keep records of all activities which transpired, isn't that correct?

A Yes.

Q One of the facts involved would be—in these reports or records—to itemize all property discovered, found, picked up, taken—whether found in the house, cars or along the roadside? Isn't that a fact?

A Yes.

Q And these reports would indicate the items taken?

A Yes.

Q Do you know whether or not Detective Sergeant McBain's report or Inspector Glennon's report indicates the property taken from the Coolidge residence, the Coolidge Pontiac or the Coolidge Chevrolet on the evening of February 2nd?

A Yes.

Q Those reports do contain that information?

A Yes.

MR. GRAF: I would like to see the reports, Your Honor please, or the list in the reports. I am willing that [fol. 107] the Court look at it first.

THE COURT: My understanding is that Brother Bussiere does not agree with the witness' statement. He says that there is not a list of the items taken.

MR. BUSSIERE: Not a list as such. There is a report which shows things.

THE COURT: The report lists things taken?

MR. BUSSIERE: Yes, it does enumerate the items taken, Your Honor.

THE COURT: What?

MR. BUSSIERE: It does enumerate the items taken.

MR. GRAF: To eliminate any confusion, I would like to see the reports.

THE COURT: I don't believe there has been any confusion.

MR. BUSSIERE: I don't believe there has been any confusion. The only thing not yet referred to is a wool hat of some sort. The State's explanation will be that this was in the pocket of a coat which has been referred to.

THE COURT: I will reserve ruling at the present time. I understand that the State will put in some evidence on this, and we will go into it at that time.

MR. DEVINE: I would like to press the position of the defense that Captain Stipps should be required to give the names of the officers stationed at the house, either inside or outside, on the evening of February 20th. These officers had an opportunity to take items and to search, and I think we should be able to inquire into it.

THE COURT: I think you should be able to question whether or not they did take any items in the house after you know there is a list.

MR. MAYNARD: I didn't realize the relevancy before. If they want names, I think the captain may answer.

THE COURT: All right; the objection is withdrawn.

Q Would you tell me the names of the two officers who were situated inside the Coolidge house on February 19th?

A I assigned six officers to the detail. I would have to check the records to be sure. I think Inspector Jolin and Inspector Lord were assigned to the house inside, and they never did report that they had removed anything from the house.

[fol. 109] Q As far as you know, at least, they didn't report?

A Yes.

Q And the officers outside the house?

A Yes. The outside officers I think were Sergeant King—now Lieutenant King—and I don't recall the other officer, but there is a report to that effect—that they were stationed outside of the house.

Q Captain, do you have your records here? Would they reveal who the officers were outside the house?

A Yes. I don't have them here, but I can get them.

MR. BUSSIERE: Your Honor, the State will furnish the names of the officers stationed outside the house.

THE COURT: All right.

MR. GRAF: Fine! I would like to have them at this time, if Your Honor please.

THE COURT: What do you say?

MR. BUSSIERE: When counsel is through with Captain Stipps I will request Captain Stipps to immediately get that information for them.

THE COURT: All right.

Q Captain, one further thing. A 1963 Chevrolet and a 1954 Pontiac were taken on some evening in February. Isn't that correct?

[fol. 110] A Yes.

Q Or perhaps it was actually, on the morning of February 20th that these cars were taken?

A No. February 19th.

Q They were taken on the 19th—the evening of the arrest?

A Just after the arrest.

Q Who took those vehicles?

A They were towed to our garage by Hamel Auto Body, and each vehicle was followed by two officers.

Q Who were the two officers?

A There again I would have to check the record to be sure. I know one was guarded by Deputy Sheriff King of Exeter, Rockingham County, and Inspector Luther—now Lieutenant Luther—of our department.

Q They guarded one vehicle?

A Yes. I think they guarded the Pontiac. For the other I would have to check.

Q Deputy Kevin King and Lieutenant Luther guarded one automobile?

A Yes. From the time it left the house until they got it in at the station it was in their view at all times.

Q What time did they leave the house?

A I wouldn't recall the time. It would be in the vicinity of nine or nine-thirty, by the time the wrecker got in there to take them out, and they took them out one at a time, but they were in there some time before midnight. [fol. 111] Q Both vehicles were picked up and at the station some time before midnight?

A That is correct.

Q Which vehicle was taken first?

A I don't recall.

THE COURT: Are you looking for these?

MR. GRAF: I would like to look at the warrant, Your Honor.

Q Do you know whether or not there was a search warrant for these two vehicles?

A I believe there was.

Q Isn't it a fact—and I call your attention to Defendant's Exhibit C—it says, "Search, to wit, 1968 Chevrolet convertible". That isn't a search warrant for the Chevrolet—

MR. BUSSIERE: Objection. That is a question of law. Warrants were issued on the 19th for two vehicles. I don't believe that is a proper question in view of the facts which have been developed up to this point.

MR. GRAF: I don't believe the search warrants included the vehicles.

MR. BUSSIERE: That is a question of law—whether or not the State has authority to take the vehicles which it has a warrant to search.

[fol. 112] Q Captain, just talking generally about the search warrant, approximately fifteen items are enumerated in each search warrant, isn't that correct? A number of items anyway?

A Yes.

Q And all of these items—you expected to find them in either car?

A It is possible.

Q Or in the house?

A It is possible.

Q Or in the laundermat?

A It is possible.

Q So it is fair to say to say you didn't really know where anything was; you were just looking around in the best place possible?

A We were looking for certain items.

Q And you were looking for certain items in all four places?

MR. MAYNARD: I don't think it is material whether he expected to find them or didn't expect to find them at any one place.

THE COURT: I think that is a question which might more properly be directed to the person who applied for the search warrants.

MR. BUSSIÈRE: It is my understanding that the Court had ruled or did rule in so far as the warrants were concerned that no further testimony would be taken [fol. 113] to go behind them at this time.

THE COURT: I thought I had ruled in your favor.

MR. DEVINE: May it please the Court, that ruling was not made on the record, and I would like to have my exception saved to such a ruling.

THE COURT: I will rule at this time then that there will be no going behind the search warrants. This also refers to the State. The State is bound by the search warrants on their face, and in the event of any admission or execution or evidence, the State may not rely on anything not in the search warrants on their face.

MR. BUSSIÈRE: As I explained in Chambers, the question was whether or not the ruling—

THE COURT: The ruling was made at the request of the State, and it is my understanding that the State wishes to rely firmly on the faces of the search warrants at the present time.

MR. MAYNARD: I am not sure just exactly what the ruling comprehends.

THE COURT: My understanding is that at the re-[fol. 114] quest of the State—and if I am wrong, you may so inform me—the State has requested that this hearing be limited to the search warrants on their face, and that no evidence beyond them should be admitted as to how they were obtained, other than what appears on the search warrant itself.

MR. MAYNARD: Testimony would be as to what appears on the search warrant itself or its face, and refers to evidence offered to the magistrate who issued the search warrant, and I would assume when you say they are limited to the face, you are including the language of the warrant which says, "and evidence offered in support thereof".

THE COURT: Is it your assertion that evidence will be introduced that there was a record made and actual evidence taken prior to the issuance of the search warrant?

MR. MAYNARD: I can't say a record was made, but there was evidence offered.

THE COURT: In the form of an affidavit?

MR. MAYNARD: No; not in the form of an affidavit.

[fol. 115] THE COURT: Was it sworn testimony?

MR. MAYNARD: No, it was not. The Chief swore, in making this application, that there was evidence thereof. I think Your Honor's ruling is right; it goes to the face of the warrant just the same, but there was other evidence.

THE COURT: My only point is, if my understanding of the ruling is correct you stand or fall at the present time upon the warrants on their face, and you might not urge on an appeal that there was evidence beyond what would appear on the face of your warrant, other than you might, of course, assert that evidence was indicated to you orally when issuing the warrants.

MR. MAYNARD: I think with that statement we are correct.

MR. DEVINE: I am not sure that I understand the State's position. Do they take the position that they can go beyond what appears on the warrant in this court but we are not allowed to go beyond what appears on the warrant in this court?

[fol. 116] THE COURT: That is not my understanding at this time. These warrants are unusual. At least, they are not similar to the one in this opinion, which is giving some trouble, in that they contain no affidavit. Am I correct on that?

MR. MAYNARD: That is correct; that is not to the effect an affidavit is given in the federal service.

THE COURT: And in most states—apparently even in Texas.

MR. MAYNARD: I am not so familiar with the rulings in other states.

THE COURT: All right.

Q Captain, I think you said that searches were conducted pursuant to these warrants on February 20th? Is that correct?

A The warrants were issued February 20th, or the search was conducted February 20th? Is that the question?

Q Yes.

A Yes.

Q Does that mean the search of the vehicles was conducted on the 20th?

A That I can't say. The return would tell you what date.

Q Referring to Defendant's Exhibit B, which is search [fol. 117] warrant 7298-C, directed to a 1951 Pontiac, what is the date on the return on that?

A February 21, 1964.

Q Would it be your opinion that perhaps this search was conducted on the 21st?

A Yes.

Q Calling your attention to Defendant's Exhibit C, which is warrant 7298-D, and is directed to a 1963 Chevrolet convertible, what is the date of the return on that?

A February 21, 1964.

Q Atain it is your best recollection that this search would have been conducted on February 21st, 1964?

A Yes.

Q While we are at it, why don't we go to the other two warrants again. Defendant's Exhibit A is a warrant—

MR. BUSSIÈRE: I object, if he is going to go through every warrant at this time. It seems to me that they speak for themselves.

MR. GRAF: I was under some miscomprehension with the subject. The vehicles were picked up on the 19th and I was inquiring as to the time the search was conducted. If you represent that the search was conducted on the date of the return, I would be satisfied.

[fol. 118] MR. MAYNARD: I am not sure. The witness says he doesn't know, and I don't know either.

THE COURT: Gentlemen, it would be very helpful to the stenographer—from both sides—if one person would speak for the prosecution and one for the defense, if possible, because as you know, the stenographer has to write each name down when you speak and she isn't always looking at you.

Q As far as the house and the laundermat are concerned, is it your best recollection that they were search on the 20th?

A Yes.

MR. GRAF: No further questions.

MR. MAYNARD: We have no questions, but we may, Your Honor, wish to call him back. We haven't determined at this point of the evidence.

THE COURT: All right.

MR. GRAF: Thank you, Captain. That is all I have.

MR. REYNOLDS: I would like to call Mr. Leavitt.

[fol. 119]

TESTIMONY OF
NORMAN W. LEAVITT

Sworn by Mr. Reynolds; direct examination by Mr. Reynolds:

Q May I have your name, please?

A Norman W. Leavitt.

Q Your position with the Manchester Police Department?

A Assistant Chief.

Q You have been in that capacity since January?

A Of this year, yes.

Q In regard to the investigation of the Mason case, you were assigned—you were working on that case?

A Yes, sir.

Q In the course of it you received certain search warrants?

A Yes, sir.

Q From whom?

A The Attorney General's office.

Q Well, that is the Attorney General directed you to go to various locales and try to find certain items enumerated? Isn't that right?

A Yes, sir.

Q Now, all of the items that you were looking for are identically listed in all of the warrants? Isn't that right?

A These are the returns here.

Q Let me put it this way. In Exhibit A, this is a search warrant seeking certain items where?

[fol. 120] THE COURT: I think it states, to the left.

A The Laundermat, at 712 Valley Street in Manchester.

Q Now, you were in charge of this search, looking for these items at the Laundermat?

A Yes, sir.

Q You made that search when?

A The forenoon of Thursday, February 20th.

Q And as required, you filed an inventory as to what you did obtain?

A Yes.

Q This is your signature—Norman W. Leavitt?

A Yes.

Q In this inventory you list three items?

A Yes, sir.

Q None of these items are enumerated on the list of items to be obtained through the search warrant?

A Not as such.

Q All right. Now, the next search warrant inventory is also signed by you. This is for a search of what premises?

A The Coolidge house at 312 Seames Drive in Manchester.

Q Referring to Defendant's Exhibit D, you conducted that search?

A With others; yes, sir.

Q You signed the officer's return and inventory?

A Yes.

Q The search was made when?

[fol. 121] A After noontime. I believe it was in the vicinity of two p.m., on Thursday, February 20th.

Q How long did that search take place?

A Approximately two hours, I would say.

Q Was there at any time a subsequent search conducted of these premises?

A I did not conduct a subsequent search, but I know there was one made.

Q Now, on your search of the house you inventoried four items, is that right?

A Yes, sir.

Q Now, are any of the four items itemized in the search warrant as items that you were looking for?

A Specifically as such, no.

Q Now showing you Defendant's Exhibit B—that is a search warrant to search a 1951 Pontiac? Is that correct?

A Yes, sir.

Q A search was made for the same items as in the other search warrants, under your direction?

A Let me read it, please.

Q I am sorry. You can compare them.

A My last statement with reference to the search of the house at 312 Seames Drive—I would like to correct my answer. One item is listed, which includes debris which we did take, and which we listed in the inventory. [fol. 122] THE COURT: Do you want to answer the last question now? He asked you if the list was the same as you were looking for in the other two search warrants.

WITNESS: Yes, sir.

Q And this was the search warrant, Defendant's Exhibit B, of the 1951 Pontiac?

A Yes.

Q And the search was made for these same items, under your charge?

A Yes.

Q And that search was conducted when?

A Friday, February 21st, in the afternoon.

Q Where was the search made?

A At the police garage in Manchester.

Q That search took how long?

A Approximately four hours.

Q That also was conducted by yourself?

A Yes; myself and Inspector Roger Beaudoin of the Manchester Police Laboratory.

Q To your knowledge was a subsequent search made, other than on that day or on that afternoon, of that vehicle?

A I did not make one subsequent to that search. No, sir.

Q Do you know if the examination of this car continued?

A I understand that there was another examination made subsequent to this one.

[fol. 123] Q Again, when you examined this 1951 Pontiac, you filed an inventory of what items you took?

A Yes.

Q Two items, so to speak?

A Yes, in general.

Q Vacuum sweepings, and a piece of fibre?

A Yes.

Q Were any of these items listed in your search warrant?

A Yes. Yes, under the next to the last item, under "debris".

Q This item is "work shop debris". Do you mean to say your inventory of vacuum cleaner sweepings from the floor mat and trunk may be considered as—

A In the sense that work shop debris could be tracked from the shop into the car with other debris.

Q If it had actually been work shop debris, you would have said "work shop debris", wouldn't you?

A In examining vacuum sweepings, it is impossible to say what is work shop debris, road debris, or house debris.

Q It says on the search warrant, "Work shop debris, including but not limited to wood shavings, metal shavings and brass filings". Did you in your inventory make any reference to wood shavings, metal shavings or brass filings?

A No, but it is impossible to determine with the naked eye what the vacuum cleaner contained, individually.

Q Do you know whether or not the vacuum sweepings [fol. 124] contained metal shavings? Or do you have no idea?

MR. MAYNARD: I object, unless he is asking at the time he made the search.

A At the time we made the search the vacuum sweepings were an accumulation of debris. The only specific item noted in the vacuum debris in this car was a single live round of twenty-two calibre ammunition. Because of its weight and condition, it wouldn't stay in the vacuum trap.

Q You didn't indicate any shell or bullet here?

A That is included in the vacuum sweepings.

Q So in this inventory of vacuum sweepings, you include a bullet or shell?

A It came up with the vacuum sweepings, and I know of my own knowledge that it came up with the vacuum sweepings.

Q Why didn't you inventory the bullet as such?

A Only because it was part of the vacuum sweepings, and I inventoried it as such.

Q And you felt that vacuum sweepings were in general workshop debris—under that general category?

MR. MAYNARD: I object, unless he is referring to the time of the making of the inventory.

MR. REYNOLDS: I never said at any other time.

A In my opinion, these vacuum sweepings which [fol. 125] came up could contain workshop debris, house debris, or any number of different kinds of debris, all deposited on the floor mats of this particular car.

Q Well, you understand what we are doing here is getting a list of the items taken under a search warrant, and items not taken under a search warrant. The State has furnished us with a list of the items taken without a search warrant, so it is fair to add to that list a shell from the back seat of the vehicle?

MR. MAYNARD: Just a minute. We added that yesterday, I believe.

THE COURT: I don't believe these are quite the same shells.

MR. REYNOLDS: No; yesterday it was shells from the glove compartment, which were in a box.

THE COURT: I may be confused, but I think this is not the same shell which was listed in your list yesterday.

MR. KALINSKI: I don't believe there is any confusion. We stated in open court yesterday that we had this shell included in the vacuum sweepings.

THE COURT: Let me see the letter which was marked as an exhibit.

MR. KALINSKI: It is not in the letter; it is part of the return on the search warrant.

[fol. 126] THE COURT: I think that is correct; I think he said there was a live shell.

MR. REYNOLDS: Now he says there was three.

MR. KALINSKI: I don't know whether it is two or three, but whatever it was it was included in the return of the search warrant.

MR. BUSSIERE: I think I said in the vacuum sweepings there were other things, including live rounds of ammunition.

THE COURT: I think at some yesterday somebody did refer to live rounds of ammunition picked up with vacuum sweepings.

Q We are still talking now of the search of the 1951 Pontiac. The vacuum sweepings included—was it a live round or spent round?

THE COURT: He said live round.

A Yes. Live round.

Q Was there more than one live round?

A Not that I saw at the time, no.

Q Was there anything else other than ammunition picked up with the vacuum sweepings?

A Yes. There were pieces of rubber matting—where the mat was old and deteriorated. I could see that go into the trap. I could see flakes of rusted metal going into the trap, but I didn't itemize them and differentiate [fol. 127] on the return of the warrant to set out different things included in the vacuum sweepings, any more

than I did with the live rounds of ammunition. I could see things go into the trap, but I didn't itemize them as such.

Q At some time the vacuum sweepings were broken down to analyze what was what? In other words, one was a bullet, this was this and that was that?

MR. MAYNARD: I object.

THE COURT: I think as a general question it may stand; beyond that, that would be as far as I would allow you to go. I assume the answer would be "Yes"?

A Yes. That was the purpose of taking the vacuum sweepings.

MR. REYNOLDS: My reason was, I don't believe that the inventory particularized very much.

THE COURT: I understand.

Q On this inventory then of the Pontiac, you say the vacuum sweepings covered workshop debris, but these other items are not listed in the items to be obtained? Isn't that right?

A Not as such, but I think there is a reference to it somewhere here—under this term, the word "Blood"—items which appeared with stains on them, which in my opinion could possibly have been blood, were retained for examination.

Q Pieces of fibre insulation from left front floor mat [fol. 128] with reddish stain you felt was covered then by the word "blood"?

A Yes, I think so.

Q Now Defendant's Exhibit C was a search warrant of the 1963 Chevrolet convertible?

A Yes.

Q And the items to be searched for are the same as the items sought for in the Pontiac, the house and the laundermat?

A Yes. The list is identical.

Q And in the search warrant of the 1963 convertible—does your inventory of these three items list anything which you asked for in the search warrant?

A Yes, sir; under the same statement I made relative to the vacuum sweepings.

Q Being the same idea—vacuum sweepings being the same idea as workshop debris?

A Yes.

Q "Carborundum honing stone with reddish stains, boxed". Is that related to any of the items you were looking for?

A Yes; under this item, "blood".

Q I see. Because of the reddish stain?

A Yes.

Q "Yellow towel, stained"?

A By the same token, under the single word, "blood".

Q Do you mean this was stained with a reddish color which you thought might be blood?

[fol. 129] A Yes.

Q When was the search made of the 1963 Chevrolet, and where?

A In the Manchester Police Station garage, in the forenoon of Friday, February 21st, in the presence of William Craig, Jr., Attorney.

Q That vehicle was later returned to Mrs. Coolidge?

A No. Prior to the noon hour we turned the vehicle over to William Craig, Jr., who drove it off.

Q By the way, were you in charge of the search on the search warrants in regard to the Pamela Mason case?

A Yes, I was in charge of all the warrants on which my name appears.

Q And at no time did you ever have a warrant to take any motor vehicle, did you?

MR. MAYNARD: I think that is a question of law. Those are the warrants which he had.

THE COURT: These are all the warrants which the State—

MR. MAYNARD: Those are all the warrants, plus a warrant for magazines, books and so forth.

MR. REYNOLDS: There was no specific warrant to take the two cars—the Chevrolet and the Pontiac.

THE COURT: I believe your statement is there were [fol. 130] no search warrants other than those which are before the Court?

MR. MAYNARD: That is correct.

MR. REYNOLDS: No more questions, thank you.

MR. MAYNARD: We have no questions at this time.

MR. DEVINE: Mrs. Joanne Coolidge.

TESTIMONY OF MRS. JOANNE COOLIDGE

Sworn to Mr. Devine; direct examination by Mr. Devine.

Q Please keep your voice up, so that we all can hear you, Joanne. What is your name?

A Joanne Coolidge.

Q How old are you, Joanne?

A Twenty-seven.

Q You are Ed Coolidge's wife?

A That is right.

Q When were you and Ed married?

A January 15th, 1961.

Q Do you have any children?

A Yes, we have one daughter.

Q How old is she?

A She is two.

[fol. 131] Q Referring, Joanne, back to the events of February 2nd, 1964, which was a Sunday—the day Ed went to the station. Do you recall that day?

A Yes.

Q What was the first indication you had that day that Ed was going to the station for questioning?

A A 'phone call early in the morning.

Q About what time did they call?

A About eight.

Q Who was the call for?

A For Edward.

Q Was it from the police station?

A I believe so.

Q Did he tell you that they had asked him to come up for questioning?

A Yes.

Q What time did they ask him to come?

A About one.

Q Did he go to the station about one?

A Yes, he did.

Q Where did you go while he went to the station?

A I stayed at my mother's and had dinner. Then I was going home, to my home at 312 Seames Drive.

Q Did you stop at the station to pick up the keys to the house?

A Yes, I did.

[fol. 132] Q Did somebody go below and get the keys to your house?

A Yes.

Q Did you see Ed at that time?

A No, I didn't.

Q Some time later did you see Ed at the station?

A Yes.

Q What were the circumstances?

A After the baby was asleep, I was doing the dishes. Two officers came to the house and told me that Edward wanted to see me at the station.

Q What time was that?

A Between three and three-thirty.

THE COURT: We will take a five minute recess while the bells are ringing.

(Recess 12:00 to 12:05 noon)

Q Please keep your voice up. I am standing back so if I can hear you everybody can. About three to three-thirty, as I understand, two police officers came to your home, on Sunday, February 2nd, and said that Ed would like to see you at the station?

A Yes.

Q Did you recognize the officers?

A No.

Q Were they in uniform or plain clothes?

[fol. 133] A In plain clothes.

Q Did you accompany them to the station?

A Yes.

Q Tell us what happened then.

A I was lead upstairs, I believe to the third floor, and I was allowed to see Edward.

Q How long did you see him?

A About five minutes.

Q Then what happened?

A I was asked if I knew my way out. I said, "Yes". One officer said he would take me downstairs. When I got downstairs, he asked me to wait in a room because Captain Stipps wanted to speak with me.

Q That was on the second floor?

A Yes.

Q Did Captain Stipps speak with you?

A Yes, he did.

Q Tell us about your conversation with Captain Stipps?

A Captain Stipps asked me my name, and my maiden name. Then he wanted to know what Edward had told me upstairs. I told him it was just plain conversation; it was nothing concerning any case or anything—just concern over me and the baby.

Q What did he say then?

A Then he asked—oh, something about if Edward and I were compatible. I said, "Yes". He said, "Why, if [fol. 134] you have been married three years do you have only one child?"

(Witness weeps)

THE COURT: Why don't you sit down? You had better bring her a glass of water.

MR. DEVINE: Do you think you can go on now?

WITNESS: I think so. I am sorry.

MR. DEVINE: All right.

A (Continuing) Then he asked me if Edward had any other girl friends. I said, "No". He said he knew for certain that he did. I said I didn't believe that, because I knew my husband. Then he went back to what Edward had talked to me about upstairs, and if I withheld any information he could give me a prison sentence, and things like that; and after he let me go.

Q What effect did this questioning and threatening have on you?

A I was very nervous. I could just barely drive home.

Q When you got to your home, who was there?

A My mother-in-law.

Q That is Edward's mother—Mrs. Coolidge, Sr.?

A Yes.

Q I understand that sometime later that night—I believe Sergeant McBain and Inspector Glennon, who you heard yesterday, said at about ten-thirty they went to your house?

A Yes.

[fol. 135] Q Do you recall that?

A Yes.

Q Were they in uniform or in plain clothes?

A Plain clothes.

Q Was your mother-in-law there at that time?

A Yes.

Q Did they identify themselves as police officers?

A Yes.

Q You let them into the house?

A Yes, I did.

Q Tell us what they talked about at the beginning. Did you ask about your husband and where he was?

A Yes, I did. When they came in and were seated in the living room, they just asked my name and where I went to school, and things like that. Then they had asked my mother-in-law to leave. I asked them if Edward was coming home. They said, "No, he was in serious trouble." He didn't state what it was. They told me grand larceny. That is the first I knew about that.

Q They told you that he was charged with taking money from Cote Brothers?

A Yes.

Q Did they ask to see a washing machine, or anything like that, in your house?

A No, they didn't.

[fol. 136] Q What else did they ask you about?

A They asked if Ed had any rifles, and I said, "Yes, he does." Then I asked if they would like to see them, and they said, "Yes". I said, "I will get them", and they said, "We will come with you."

Q Where was this conversation?

A In the living room.

Q It was Inspector Glennon, Detective Sergeant McBain and yourself?

A Yes.

Q Your mother-in-law had left?

A Yes.

Q When they said they would go with you, where were you going to get the weapons?

A To my bedroom.

Q Did you get them?

A Yes.

Q Did you go to your room?

A Yes.

Q Did they follow you to your room?

A Yes.

Q Did you invite them to follow you to your room?

A No. I intended to bring them to the living room.

Q Tell us what happened in the bedroom.

A I got the guns out for them.

[fol. 137] Q Where were they kept?

A In the closet.

Q In the bedroom?

A Yes. I got the guns out and they checked them. Then they asked what Edward was wearing that night.

Q Did they tell you that they were going around and checking out firearms and any suspects that they had in the Mason case?

A No.

Q And did they tell you that you didn't have to give them these weapons unless you wanted to?

A No; I felt that I had to.

Q Did they tell you that your husband had given them permission to come over there?

A No; they never said anything.

Q Or to take the weapons? Is that right?

A Yes.

Q You say they asked you what he was wearing that night?

A Yes.

THE COURT: What night is being referred to now?

MR. DEVINE: Yes, Your Honor.

Q What night were they referring to?

A January 13th.

Q That is the night the Mason girl disappeared?

[fol. 138] A Yes. I had the four pair of trousers folded. They were on—I forget what you call it—the hamper. They were on top of the hamper. I put them on the bed, and they opened the four pair of trousers—

Q Were these work trousers?

A Yes.

Q Trousers which Ed wore when he worked at the Cote Baker?

A Yes, they were issued from Cote Brothers. I suggested it might have been one or two pair—according to how they were in the pile. They checked these two more closely and they decided to take one.

Q Did they ask if these garments had been cleaned since January 13th?

A Yes, they did.

Q What did you say?

A I said I waited until I accumulated five or six pair and then would take them to the cleaners, and it was one-day service.

Q Did they take any of the trousers?

A Yes, they took one.

Q Did they say anything when they took them?

A They said, "We will take this pair."

Q Did they ask anything about the cars?

A Yes, they asked if they could check the vehicles, and I said, "Where?"

Q One was a Chevrolet and one was a Pontiac?

[fol. 139] A Yes.

Q Where were they at that time?

A They were in the driveway.

Q Tell us what happened.

A I went to the kitchen and got the keys to the cars and gave them the keys, and they went out.

Q Did you go out with them?

A No, I didn't.

Q Did you watch what they were doing?

A No. I went back to the living room and tried to clean up a little bit. I did glance out the kitchen window at one time to see if they had left.

Q How long were they there?

A I would say fifteen minutes or so.

Q Then what happened?

A One came back with the keys, and then they left.

Q Do you recognize which one of them came back with the keys?

A I believe it was Officer McBain.

Q Did they say anything about taking anything from the vehicles?

A No. He said nothing about removing anything from the vehicles.

Q Did you know whether or not they had taken anything from the vehicles?

A No,—only what they said here. That is the first I knew about it.

[fol. 140] Q Do you mean that yesterday is the first time you knew that anything was taken from the cars?

A Yes.

Q They didn't ask your permission to take anything?

A No.

Q Now, one of the officers—and I believe it was Inspector Glennon—gave you a receipt for the four guns, one red jacket and a pair of uniform trousers, which has been marked as Defendant's Exhibit H. Is that correct?

A That is right.

Q This receipt doesn't list anything as having been taken from those vehicles? Is that correct?

A That is correct.

Q And you say that they didn't inform you or ask your permission to take those things?

A No.

Q On the night of February 19th were you at home when the police arrived?

A Yes.

Q With the arrest warrant for your husband?

A Yes.

Q About what time of the night was that?

A Between seven-thirty and eight.

Q What did the police tell you at that time?

A I believe Captain Stipps was talking mainly with [fol. 141] Edward. He told me to go in the living room and get out of their way. I tried to go out in the kitchen,

and he told me to go back in the living room. Then he came in and told me that they were arresting Edward.

Q Did he tell you to get out of the house?

A No, he didn't. He left with Edward, and there was about four or five left in the house with me. Captain Stipps did mention that it would be best if I left the house, and I didn't want to. Then the other—I don't know who it was—said, "We have made reservations at a motel for you." I says, "Well, if I have to leave I won't go to a motel." Then I tried to get my sister. That is when I went down to Windham.

Q You went down to Windham with your baby?

A Yes.

Q After packing a few clothes?

A Yes. I was going to take my own car. Someone said that I couldn't take my own car, that they were both empounded.

Q Who took you to Windham?

A Two policemen. They were plain clothes men.

Q When did you go back to the house?

A I believe two days later, or a day and a half later. I needed clothes. I hadn't taken anything for myself—just a few things for the baby.

Q When you went back were you able to get into the house?

[fol. 142] A No. The locks were changed.

Q Were there officers there?

A No.

Q How did you get in the house?

A I called up Bill Craig. He went to the station and got me a key, and I was allowed to go into the house and get a few more clothes.

Q When you went into the house after you got the key to the new lock, what was the condition of the house inside?

A Everything was left in a jumble, like when I left the house; but when I went into my drawers, it was a mess.

Q It was obvious that the house had been searched, was it?

A Yes. My dresser—I didn't go into Eddie's—I was just concerned with getting my own clothes, and—My God!

MR. DEVINE: Thank you, Joanne. I have no further questions. These gentlemen may want to ask you some questions.

MR. MAYNARD: We would like just a moment, Your Honor.

THE COURT: You may be seated.

WITNESS: Thank you.

CROSS EXAMINATION BY MR. MAYNARD:

Q Mrs. Coolidge, do you remember the evening of January 13th?

A Yes.

Q You recall the night of the storm—the night the [fol. 143] Mason girl disappeared?

A Yes.

Q Were you at home that evening?

A Yes.

Q Had you been at home all afternoon?

A Yes.

MR. DEVINE: May it please the Court, I don't see the relevancy of this testimony on this particular issue. It is not within the scope of my direct examination.

THE COURT: I have a little question about it.

MR. MAYNARD: I think the relevancy may appear if I am allowed to continue.

MR. DEVINE: May I request that my brother make an offer of proof at the bench before proceeding with this line of questions, Your Honor please?

THE COURT: Yes; I think that might be well.

AT THE BENCH:

MR. MAYNARD: I am going to offer some evidence on the credibility of the witness here. To do that I am going to show what she knew of the case and what she [fol. 144] knew of an alibi or alibis which were attempted to be established by herself as well as by Mr. Coolidge.

THE COURT: I don't follow you.

MR. MAYNARD: I am going to show by this witness that she was home on the evening of the 13th of

January, the night this girl disappeared, and that Mr. Coolidge, through her, attempted to establish an alibi to the effect the he also was home that evening during the time the girl disappeared from home, when in fact I think she testified he wasn't home; also she went to a neighbor to get her to testify that he was home, to confirm her alibi, and later decided she wouldn't press it as an alibi. This refers to Captain Stipps' testimony that he told her if she had evidence she shouldn't withhold it.

MR. DEVINE: If it is offered on credibility, you have to lay a foundation first. I ask Brother Maynard if he contends anything which she said on direct examination is not true. I say it corroborates what all the witnesses have said.

MR. MAYNARD: I think most of the things she says are in line with what the State's witnesses have said, [fol. 145] but some things she disagrees on—namely that they took a set of cartridges and the fact she didn't say they looked at and checked the guns. She says she didn't do it. They say she did. And she is the wife of the respondent.

THE COURT: I guess we will adjourn at this point until two o'clock.

(Recess 12:30 to 2:00 p.m.)

MR. DEVINE: Your Honor please, when we recessed for lunch I think there was a question pending, and an objection.

THE COURT: I will exclude it.

MR. MAYNARD: May the record, Your Honor please, show my exception, if it avails me?

THE COURT: All right.

Q Mrs. Coolidge, on January 28th some officers came to the house when your husband was there, did they not?

A Yes.

Q Do you know who the officers were who came to the house that day?

A I don't recall.

Q When they came to the house did they talk with you, at that time?

A No.

[fol. 146] Q You had no conversation with them?

A No.

Q They talked, however, with your husband, Edward Coolidge?

A Yes.

Q Were you present during the conversation with Edward Coolidge?

A Off and on. The baby was sick. I was trying to keep her quiet, and she was in and out between the kitchen and the living room.

Q At any time on this January 28th do you recall whether or not your husband brought out some guns for the police to see?

A Yes.

Q Do you know how he happened to bring them out?

A No, I don't.

Q Do you remember any conversation at all about the guns?

A No.

Q Do you remember how many guns your husband brought out for the policemen to see?

A I believe he brought them all out before.

Q Are you interested in firearms yourself?

A No.

Q Do you know enough about firearms so that you can distinguish between shotguns and rifles?

A No; only if I see a bullet, I guess. I know one has a larger bullet, but I couldn't tell you which one goes to which gun.

[fol. 147] Q You don't recall any conversation between your husband and the officers about these guns?

A No, sir; not that I can recall.

Q Will you tell us what conversation there was on February 2nd about the guns?

A Well,—

MR. MAYNARD: Strike the question.

Q On February 2nd the guns were again displayed to the police officers?

A Yes, that evening—late that evening.

Q Yes, late that evening when you were at home with your mother-in-law and the policemen came?

A My mother-in-law was gone at that time.

Q Yes, but that same evening, after your mother-in-law was gone, the guns were again produced?

A That is right.

Q And I suppose you know they were the same guns?

A They asked if we had any firearms in the house. I guess they called them guns or rifles. I said, "Yes". I said, "I will get them in the bedroom", and they said, "We will come with you."

Q Do you recall if both police officers went in with you?

A Yes.

Q Where were they?

A In the closet.

[fol. 148] Q In the closet in the bedroom?

A Yes.

Q Is this the same closet where the hunting jacket was hanging?

A No. The hunting jacket was hanging in the hall closet.

Q Did you go with them to get the hunting jacket?

A The way they were standing, the door to the closet in the hallway was opposite the bedroom. I think they stood in the bedroom and I reached to the hall closet and got the jacket.

Q Do you recall if there was a toque or cap in the pocket of the jacket?

A I don't know.

Q There was a group of trousers, and of the bunch of trousers they took one pair?

A Yes.

Q Where were the trousers?

A Right beside the door there is a small space and I have a hamper there, and on the hamper I kept the clothes that are going to the cleaners.

Q Is that the door in the hall?

A No; it is the door going out into the hall from the bedroom.

Q Is that about where they were standing?

A In fact, I think that I had to ask one of them to move, or they moved, because it was right there.

Q You say there were four pair of trousers?
[fol. 149] A I believe there were four.

Q And they selected one pair of the four?

A Yes.

Q What actually did they say about taking them?

A Well, they checked them over and they said, "We will take this pair."

Q What did they actually say about taking the guns?

A I believe I asked if they wanted the guns. One gentleman said, "No"; then the other gentleman turned around and said, "We might as well take them." I said, "If you would like them, you may take them."

Q Did you go further and say, "We have nothing to hide."?

A I can't recall if I said that then or before. I don't recall.

Q But at some time you indicated to them that as far as you were concerned you had nothing to hide, and they might take what they wanted?

A That was it.

Q Would you say that is so?

A I believe so.

Q There was some talk about your being in a highly nervous state that evening. You made coffee for the officers, didn't you?

A Mainly for myself.

Q Did you feel at that time that you had something to hide?

A No.

[fol. 150] THE COURT: Brother Maynard, why don't you stop for just a minute.—You may sit down, Ma'am.

WITNESS: I am sorry.

THE COURT: Would you like to have the last question read?

MR. MAYNARD: I don't believe I care to have it read, Your Honor.

THE COURT: Was it answered?

STENOGRAPHER: Yes, it was.

THE COURT: All right.

Q At that time you felt you had nothing to hide from the police officers?

A That is right.

MR. DEVINE: May I ask what time he refers to, Your Honor.

THE COURT: I understand it was February 2nd, in the evening when the two police officers were there.

WITNESS: That is right.

THE COURT: Your answer was, "Yes"?

WITNESS: Yes.

Q In fact, at that time if you could clear your husband of any charge you were anxious to do it, weren't you?

A Yes.

[fol. 151] Q Captain Stipps, that afternoon, I believe you implied, suggested to you in one manner or another that you should co-operate with the police, didn't he?

A He told me I should co-operate with the police, and if I didn't I could be sent to prison.

Q And at some time prior to that night you had thought in your own mind about furnishing an alibi for your husband, hadn't you?

A No.

MR. DEVINE: If the Court please, I object to that question. It is a collateral issue, for one thing.

MR. MAYNARD: It is offered on her state of mind.

MR. DEVINE: I don't believe it has any bearing on her state of mind some time later, Your Honor.

THE COURT: I will sustain the objection to the question in its present form.

Q On the night of February 2nd when the two police officers were there, had you decided in your own mind that you should tell the police officers the truth?

A I told them the truth to every question that they asked.

Q You did that truthfully, didn't you? You intended [fol. 152] to tell them the truth that night?

A Yes. I was brought up to tell the truth.

Q But several days earlier than that you had different thoughts in your mind, didn't you?

MR. DEVINE: Same objection, Your Honor please.

THE COURT: She may answer.

MR. DEVINE: May I have an exception, please?

THE COURT: Yes.

A I was not asked that question directly.

Q I am not suggesting that you didn't tell the truth, but didn't you have in your mind that you were going to tell a falsehood a few days earlier?

A Yes, I did.

Q But by February 2nd you had formed the intention in your mind to tell the truth, and you were prepared to and you did tell the truth?

A Yes

Q But sometime before February 2nd you had given consideration to lying or giving a false statement to help your husband? You had given some thought to that before, hadn't you?

A About telling the truth? I don't—.

Q About telling the truth.

MR. DEVINE: If the Court please, I don't think that [fol. 153] question is intelligible. I think my brother should rephrase it.

MR. MAYNARD: I will be glad to.

Q Sometime before February 2nd—before the night you told the policemen the truth, you had given consideration to telling a lie about your husband, hadn't you?

A I don't quite understand the question.

Q Would you tell us what conversation you had with Mrs. Mayhew about what you would like to have her say?

MR. DEVINE: This is a completely collateral issue, and I object to it, Your Honor please.

THE COURT: I thought she had already answered the question some time ago—not quite the way she appears to be answering it now. I am inclined to think in part now that it was because she didn't understand it. Previously, when you asked the question, she agreed that you were correct, if I understood her correctly.

MR. MAYNARD: That may be so. Perhaps I have gone into it too far, and I would like to clarify it.

MR. DEVINE: I don't believe there is any testimony relative to Mrs. Mayhew.

[fol. 154] THE COURT: No, but I do think she did testify that some time prior she had considered telling a

lie to protect her husband. There is nothing you are going to put in now that would contradict what she has said?

MR. MAYNARD: Very well, Your Honor. Let me ask this question,—and if you will, pause before you answer.

Q What caused you to change your mind about the thought of lying?

A Nothing changed my mind. I knew my husband was innocent and he can be proved innocent with the truth; that is why I told the truth.

Q What Captain Stipps said to you about telling the truth didn't influence you in any way?

A Pardon?

Q What Captain Stipps said to you about telling the truth—that didn't influence you in any way?

A I don't know if I had—I don't know if I could think that far back. I was so nervous and upset then. I don't know if it was on my mind or not.

Q Well, you were not nervous and upset because you were going to tell the truth, were you?

A I am just nervous if any police officer walked up to me.

Q Were you nervous when your husband was home, too, and the police officers were there?

[fol. 155] A Yes, I was.

Q Now, are there any articles which belong to you or to your husband that are missing that you think have been taken, other than what have been read here on the search warrants and talked over here? Are you aware of some other items which are missing?

A No, I can't tell, because when I moved out of the house I didn't pack the things. That is why I can't tell, unless I go through all my articles, and they are still packed in boxes.

Q Do you have some reason to suspect that some items are missing?

A I don't know.

MR. DEVINE: If she knows.

WITNESS: I don't know.

Q You don't know of anything that is missing?

A No, I don't.

Q When you left the house on February 19th, you went down to your sister's?

A That is right.

Q And you went down in the company of two police officers?

A Yes.

Q Do you know their names?

A I am sorry. I don't.

Q You were, of course, nervous that evening?

A Yes, I was.

[fol. 156] Q When you got down to your sister's, did the police officers stay there?

A Yes, they did.

Q How long did they stay?

A They left shortly after midnight, I believe, because Attorney Craig called me and I told him that they were there. They were planning to stay there the evening. He spoke with one of them on the 'phone, and when he got off he said they had to leave.

Q Had you asked them to leave before?

A No.

Q They were not foistering themselves on you?

A I was told that they were going to stay with me all during the night so that reporters would not bother me.

Q Were you told something similar to that about the two men who were left at the house—that they were there to protect things?

A They didn't mention that. After they took Edward out, I had only ten minutes—they told me to pack, because they told me at eight o'clock it would be on the news and they wanted the baby and I out of the house.

Q And you obliged them?

A Yes. I didn't know I had the right to stay.

Q Had you talked with Mr. Craig at any time before you got down to your sister's?

[fol. 157] A No, I didn't.

Q Do I understand you didn't go back to the house before the lock was changed?

A No, I didn't.

Q You didn't go back there with Mr. Craig at all?

A No. I went with Mr. Craig after the lock was changed.

Q Before you went back with Mr. Craig, you didn't go to the home at all?

A No. I had no transportation to Manchester.

Q Do you know whether or not Mr. Craig went to the house?

A He brought the key down to me.

Q Mr. Craig?

A Yes; he came back with the key.

Q Was that after the lock was changed?

A Yes.

Q Didn't he have the keys before the lock was changed?

A The old lock?

Q Do you know whether he did or not?

A I don't know at all—no.

MR. MAYNARD: I have no further questions.

MR. DEVINE: Thank you, Mrs. Coolidge.

I have no further questions. You may step down.

Mrs. Coolidge, Sr. please.

[fol. 158]

TESTIMONY OF
MRS. DOROTHY COOLIDGE

Sworn by Mr. Devine; direct examination by Mr. Devine:

Q Please keep your voice up, Mrs. Coolidge.

A All right.

Q What is your name, Ma'am?

A Mrs. Dorothy Coolidge.

Q You are Edward Coolidge's mother?

A Yes.

Q Is your husband alive?

A No.

Q Where do you live?

A 852 Clay Street.

Q So Edward, your son, and Joanne, your daughter-in-law, in February of 1964 lived in their own home? Is that right?

A Yes.

Q Where was that home?

A 312 Seames Drive.

Q And you lived on Clay Street?

A Yes.

Q About how far apart were the two houses, roughly?

A Maybe half a dozen blocks. It was just about the same distance on the next street, off the street, to my house, you might say, straight in line.

Q That is you were not next door to each other?

A No, no.

[fol. 159] Q How long would it take you, riding in a car, from your house to Ed's house?

A That was only a matter of a couple minutes. I walked it many a time.

Q Going back to February 2nd, 1964—which was a Sunday—and that was the day that Ed went to the police station for questioning and taking the lie detector test—is that right?

A Yes.

Q When did you first learn that Ed had gone to the police station?

A Joannie called me up and told me to come right off.

Q Do you recall what time she called you?

A Between two-thirty and three. She says, "I have got to go somewhere; come over and take care of the baby." I says, "All right." I says, "What do you want and where are you going?" She says, "Just come up." So I went up.

Q When you got there did you learn where she was going?

A Yes. She was going to the police station. There was two officers there, and I knew one of them. I says, "What is up? What is this all about?" They said, "Nothing we know; we have just got to bring her down."

Q Can you tell us how Joanne appeared at that time?

A She was all flustered. She didn't know what was what. She went out the minute I got there. She just said, "The baby is sleeping. You watch him." I did that.

[fol. 160] Q Would you classify her as a nervous girl?

A Yes; very nervous.

Q Even under normal circumstances she is nervous?

A Yes. She holds it in. She is very, very nervous. You touch her and she would be like ice.

Q How long was Joanne at the station that afternoon, before she returned to the house?

A Maybe an hour and a half. The baby had woke up from the nap, I know, and I had the baby.

Q When she came back was she driven home by the police officers, or did she drive back in the car Ed had driven to the station, if you recall?

A Gee, I can't say I recall.

Q When she came back what was her condition and her appearance, as you observed it at that time?

A She was crying and upset and didn't know what it was all about.

Q Did she say what had happened at the station?

A Yes.

Q What did she say?

A She said she had talked with Edward and Officer Stipps talk- with her and told her she could be arrested for withholding information; and she said she didn't know anything—what was what.

Q You say she cried?

[fol. 161] A Yes.

Q Did she say Captain Stipps talked with her about her married life?

A Yes. She told me he asked her all kinds of personal questions.

Q You heard her testify that he asked her why she only had one child?

A Yes.

Q Is it true that she has had two miscarriages?

A Yes; one before this baby and one after this baby.

Q Going now to Sunday, the same day, Mrs. Coolidge, at some time lat that evening when Inspector Glennon and Detective Sergeant McBain arrived at the home, were you present at the time?

A Yes.

Q Tell us what happened when those two officers arrived.

A They came in and said they wanted to talk to Joannie. We went in the living room. Then they said something about whether they should talk with me there. Joannie said, "Why not"—that I am her mother in-law. Then they asked her some little thing—I don't know now what. I said, "That is the so-and-so." They said, "We want to talk with her alone; we want Mrs. Coolidge to answer." I says, "I will go in the other room." They said, "No; we want you to leave." So I called my daughter to come and get me.

Q And you went home?

[fol. 162] A Yes.

Q Can you tell us what Joannie's condition, as you noticed it, was at the time you left?

A She was very nervous—all to pieces. I don't know how to explain her nervousness. She keeps it all inside, but she is like ice. I know her, so I know her state.

Q At the time the officers leftw that night did she call you?

A Yes.

Q Did you go back to her house?

A Yes. Right away.

Q What was her condition after—when you went back after the police left?

A She was crying: she said she didn't know what was going to happen. Edward wasn't home and she didn't know what was what. She said they took some things and looked at the car; and she said they wanted the guns so she told them they could have the guns—she said she didn't want them.

MR. DEVINE: All right, thank you, Mrs. Coolidge. Just a moment, please. You may inquire.

MR. MAYNARD: I have no questions, thank you, Mrs. Coolidge.

MR. DEVINE: We rest, Your Honor.

THE COURT: Would you like a recess before you [fol. 163] proceed?

MR. MAYNARD: It might save a little time, Your Honor.

(Recess)

MR. DEVINE: Before we proceed, my brother has brought to my attention before we rested we asked for some information this morning—that is, the officers who were inside the house and outside the house; and also a list of the items which Captain Stipps gathered from the reports.

THE COURT: I understand that the State is going to put that in through its evidence.

MR. BUSSIERE: Yes, Your Honor.

MR. DEVINE: All right.

MR. BUSSIERE: Officer LeClair.

TESTIMONY OF MAURICE LeCLAIR

Sworn by Mr. Bussiere; direct examination by Mr. Bussiere:

Q State your full name, address and occupation?

A Maurice LeClair, 53 Maynard Ave.; patrolman, Mancheste Police Department.

Q Would you tell the Court whether or not on January 28th you had some contact with the defendant in this case, Mr. Coolidge?

A I did.

[fol. 164] Q Who were you with?

A Sergeant Doyon of the State Police.

Q Would you tell me what that contact was?

A We just, on a routine investigation of a report, went up to see Mr. Coolidge, to get his background, occupation, and get his story of his whereabouts, his actions and activities on January 13th.

Q Now, at that time did you look at any weapons?

A Yes, sir. We asked Mr. Coolidge in the presence of his wife if he owned any guns. He produced the guns; took the serial numbers down, the makes, the size. We also asked him if he had access to any other guns or if he ever owned any other guns.

Q What was his reply?

A His reply was that he didn't have no other guns in his possession except the ones he produced, that he did

at one time own a twenty-two calibre pistol which he reported lost or stolen in January of 1960.

Q Will you tell us what guns were produced when you asked if he had any weapons?

A He brought out three weapons—a 410 bolt action shotgun. I believe the other was a Stevens 16 calibre, and a Marlin 30-30 carbine.

Q Where was this interview with Mr. Coolidge?

A It was in his home, in his living room.

[fol. 165] Q Was his wife present at all times?

A I believe she was, sir.

Q Was anything in the interview said about a lie detector test?

A I asked if he was willing to take a lie detector test, and he said he was. He also stated that he had been asked to take a lie detector test some time prior to that.

Q That was referring back to 1960?

A Yes.

Q What did you say as to when he would take a lie detector test?

A I asked what day was available to him. He said he had Sunday and Wednesday off, and he would prefer to take it on a Sunday.

Q How would you describe his attitude up to that point?

A Co-operative.

Q Did he say anything as to whether he had been expecting you, or anything along that line?

A He did mention that he had been checked out in 1960. I believe he did say that he was expecting us.

Q Now, following the 28th, did you pursue this matter any further with Mr. Coolidge on some other day?

A Yes, sir. On February 2nd.

Q How did you go about doing that?

A Approximately eight a.m., I called Mr. Coolidge at home. I identified myself and asked him if he could meet [fol. 166] me at the station at one o'clock, that afternoon. He says, "Is that pertaining to the lie detector test?" I says, "That is right." He says, "All right; I will meet you in the station about twelve-forty-five." I got a

call in the cruiser—I was in the car—saying that Mr. Coolidge was waiting for me.

Q Sometime that afternoon you transported him to Concord?

A Yes.

Q Would you tell us the seating arrangement in the car on the way to Concord?

A He was in the front seat with me. Inspector Glennon was in the back seat.

Q Tell me what the arrangement would be if there are two officers and a prisoner?

A If we have a prisoner, the prisoner is kept in the back seat with a man; and the prisoner is kept away from the driver.

Q After you had got to Concord and had transacted your business and it was time to come back hom, was there any discussion about eating?

A Yes. After we pulled away from the state building, we offered Mr. Coolidge to go into a restaurant and have a sandwich, or would he prefer to go back to Manchester and have a meal. He said he would prefer to go back to Manchester.

Q Would you describe the seating arrangement on the way back to Manchester?

A Mr. Coolidge was in the front seat with me; In-[fol. 167] spector Glennon was in the rear.

Q Did you have any conversation with Detective Sergeant McBain at the completion of the test?

A After the completion of the test Detective Sergeant McBain asked me to come in his office and he told me what had transpired.

Q On the way back can you tell us whether or not there was any conversation about that?

A The first I heard was Inspector Glennon asked Mr. Coolidge—he says, “Concerning the money bag, how did you get it out of the shute—did you use a clothes hanger?” Mr. Coolidge says, “Is that going to be used for or against me in court?” Mr. Glennon answered, “It may.” Then he answered, “I would rather wait until later”, or something to that effect. Then he asked something pertaining to if he was going to be charged for the larceny

of the money. One of us asked why. He said, "I would like to contact my employer first." We said we didn't know anything about it; he would have to contact Captain Stipps.

Q And referring to the being charged, did he state anything about his ability to arrange things with his employer?

A He said he wanted a chance to talk with his employer if he was going to be charged; he would like a chance to contact him before he was charged. We told him we didn't know what the story was; he would have to contact Captain Stipps when we got back.

[fol. 168] Q When you got back to the station, what time was it—about?

A It was approximately seven p.m.

Q You had been away all that time?

A Yes.

Q When you returned to the station did you make any arrangements for food?

A As soon as I got to the station I had a meal ordered. I think the meal came in at approximately eight p.m.

Q What did the meal consist of?

A It consisted of hamburg sandwich, french fries, cold slaw. He did receive coffee, but he requested a bouillon instead. During the course of the evening we were drinking coffee and bouillon. I was drinking the bouillon and he was doing the same.

Q So he got what he wanted to?

A Yes.

Q When you arrived at the station did you see Captain Stipps?

A When we arrived at the station either Captain Stipps was gone or was just leaving, because I didn't have no contact with Captain Stipps until later on that evening.

Q Would you tell us when you made known to Captain Stipps anything with reference to the larceny?

A Later on that evening. Our primary reason was to get his actions on January 13th. We didn't dwell on that until just about two a.m.

[fol. 169] Q While you were in the station will you tell us where this questioning took place?

A In the Inspector Division—upstairs, in the interrogation room.

Q Was Mr. Coolidge deprived of any of his personal property—like his belt, wallet, money or watch?

A No, sir.

Q Was Mr. Coolidge free to go from one room to another?

A Yes, sir. He asked to go to the restroom. He was not accompanied. Several times he left the room, and he left by himself.

Q Was the questioning continuous that night, or did it stop for any reason?

A No, sir. At one time after the meal, I left the room. He was leaning on the table, and I didn't bother him. I let him go for quite a while.

Q And there was no one else bothering him?

A No, sir.

Q Would you describe his attitude during the course of that evening?

A Co-operative.

Q In the course of the evening you did make a number of inquiries from him? Is that correct?

A That is correct, sir.

[fol. 170] Q As you made inquiries and got replies from him, what did you do?

A Tried to verify them, sir.

Q Did that require you to leave the room?

A Yes, sir.

Q And Mr. Coolidge understood what you were doing?

A Yes.

Q And his attitude was one of co-operation? Is that right?

A It was, sir.

Q Do you know what time Detective Sergeant McBain came to the station that evening?

A It was after Mr. Coolidge had his meal. I would say it was probably eight-thirty or nine o'clock.

Q Do you know what time Captain Stipps came back to the station?

A I believe it was right around that same period of time.

MR. BUSSIERE: You may inquire.

MR. DEVINE: No questions, Your Honor.

You may step down.

MR. BUSSIERE: Captain Stipps.

TESTIMONY OF CAPTAIN JOHN A. STIPPS

Previously sworn; direct examination by Mr. Bussiere:

Q Captain, you have been sworn so there will not be any necessity of doing it again.

THE COURT: Yes.

MR. BUSSIERE: All right, Your Honor?

THE COURT: Yes.

[fol. 171] Q Do you recall, Captain Stipps, on the evening of February 2nd at what time you received any information as to a possible larceny from Cote Brothers?

A After talking with Detective Sergeant McBain, Inspector Glennon and Officer LeClair. I remember talking with McBain on the 'phone at home. Whether or not he told me at that time, I don't know; but it was around nine o'clock when I arrived at the station to meet him.

Q In the course of your deposition and in your testimony yesterday, you said something about six o'clock. Is there anything you now want to add to that—as to the hour when there might have been some circumstances, or something happened?

A It would appear now that I was mistaken in the time—from six to nine. I know that I went home late to supper, and I might have been confused as to when I was told about any larceny from Concord. I do not believe that I got the report from Concord until around nine o'clock.

Q At our request, Captain, did you ascertain what officers were detailed to the Coolidge house on the night of the arrest—February 19th?

A Yes.

Q Would you tell us which ones went to the house, and which ones were left at the house?

A The ones that went into the house and were as-[fol. 172]signed to Mrs. Coolidge were Inspector LeBoef and Inspector Vetter. They were assigned to Mrs. Coolidge, and they arrived there at seven-forty-five. They left the house at eight-sixteen p.m., with Mrs. Coolidge, and arrived in Windham, at a home there, at eight-forty-five p.m., on February 19th, 1964. The officers left at the house were Inspector Lord and Inspector Jolin; and they had orders to stay in the house all night—which they did not do, because the orders were changed and they left at ten-thirty-five.

Q As to the instructions to stay in the house—what were the instructions?

A They were instructed to sit in the living room and not to move from there unless there was any disturbance, not to use the television, or use anything in the house—just to guard the house.

Q Were any instructions given as to searching the house?

A It was definite—they were not to search the house.

MR. BUSSIERE: That is all I have.

CROSS EXAMINATION BY MR. GRAF:

Q Did you also check the list of items submitted on the February 20th reports?

MR. BUSSIERE: We will have another witness on that.

Q I gather you made a mistake yesterday, Captain?

A Yes.

[fol. 173] Q Perhaps it is fair to say that you made a mistake in June when we took your deposition?

A Yes.

Q And on both occasions you were under oath?

A That is right.

Q Yesterday you testified that as of six o'clock if Mr. Coolidge had asked to leave, you would have had to book him?

A Well, if—

Q Didn't you say it yesterday?

A I said it yesterday, but I think—using the time six o'clock, that is correct, but in the event I change my statement to nine o'clock, that possibly would be the rea-

son; but at this time, I don't know what I would have done. The thought never occurred. The incident didn't arise, and I don't know what I would have done.

Q At six o'clock or at nine o'clock if Mr. Coolidge said to you, "Captain Stipps, I think I will go home", would you have let him go home?—You wouldn't, would you?

A It would be possible.

Q Captain, as I gather, the primary concern on February 2nd was the Mason case?

A Yes.

Q There was also some concern about the larceny case?

A Yes.

Q Do you think, with those facts in mind, that you [fol. 174] would have let this man just wander out of the station at that time?

A Well, at nine o'clock I do not believe I had sufficient evidence to hold him or to book him on anything.

Q Captain,—

MR. GRAF: Excuse me. I would like to take a moment to go back to the deposition, if I may, Your Honor.

Q Again, Captain, let's go back to the deposition for a minute, reading from page 149, question 667. The question starts here, and says, "So I understand sometime around six o'clock that evening he was informed by either you or the men under you that you were going to bring charges against him for grand larceny?" And you answered, "Yes." Was that your answer?

A Yes.

Q Now I also refer to page 152 of the deposition, starting with question 683: "I assume since he made his confession you considered this grand larceny case solved as of six o'clock? Is that right?" Your answer, "Well, solved, yes." Were those the questions and answer given back in June, in your deposition?

A Yes.

Q You were under oath then?

A Yes.

Q And you were telling the truth then?

A As far as I knew.

[fol. 175] Q The only difference might be the time?

A That is right.

Q But as far as you were concerned, at least by nine o'clock the larceny was solved? Right?

A No.

Q Do you mean there is something wrong with your deposition, also, Sir?

A No. Actually at nine o'clock—now, as I recall, he was under further investigation when McBain and Glennon went to the house to ask some questions with regards to the larceny.

Q Well, we went over that yesterday, and I think we came to an understanding that one of the principal reasons for Detective Sergeant McBain going to the Coolidge house along with Inspector Glennon was in connection with the Mason case?

A Yes.

Q And that the only question raised about the larceny was the question about the washing machine?

A Yes, to verify the fact that he spent the money on a washing machine.

Q Or to verify the fact that there was a washing machine there?

A Yes.

Q I gather again that Detective Sergeant McBain and Inspector LeClair—or Patrolman LeClair and Inspector Glennon—submitted reports as to the time of the alleged confession and the time the case was solved relating to [fol. 176] the larceny case alone? Is that right?

A Yes.

Q And it would be a matter of police practise to insert the time, wouldn't it, in your daily reports?

A I believe there would be a time.

Q In other words, assuming for a minute, Captain, that such a confession or such a statement was made by Mr. Coolidge wouldn't it be fair to say the report would contain the time that such a statement was made?

A Yes.

Q Have you reviewed those reports before testifying here this afternoon?

A Yes.

MR. GRAF: I would like to see the reports, just to double-check, Your Honor. There is some confusion again on this issue as to time. I would like at this time, and demand to see the reports of February 2nd as they relate to the trip to the police barracks in Concord and the time of the return to the station.

THE COURT: Do you have them?

MR. MAYNARD: I will attempt to give them to him, Your Honor. It may take a moment, Your Honor. I would like to read them.

THE COURT: You may sit down, Captain, any time [fol. 177] you want to.—Why don't you go on to something else in the meantime?

MR. GRAF: I don't have much of anything else. I would be glad to have it marked for identification.

THE COURT: Actually, I saw the report yesterday, and it contains no reference to time, as I recall.

MR. MAYNARD: That is the problem. I don't know what my brother wants to look at. We have reports, and we decline to have them marked for identification.

THE COURT: According to my recollection, Captain Stipps is mistaken when he says they have the time when they got the confession as to the larceny.

MR. MAYNARD: This report shows the time of the confession, Your Honor.

THE COURT: Of course this is obviously inaccurate, because the witnesses have testified when Mr. Coolidge was in Concord he did confess at the time of taking the lie detector test, so that this is incorrect—obviously incorrect.

MR. MAYNARD: I don't believe it is inaccurate as [fol. 178] to this confession. It might be as to—

THE COURT: That is why I say the Captain is mistaken when he says there is a time stated as to the confession.

MR. MAYNARD: I think there was an oral confession made at Concord, and this confession was reported to Captain Stipps at sometime around nine o'clock that evening, and they continued inquiring about the Mason case.

THE COURT: This makes no statement of a written confession.

MR. MAYNARD: This is a report of a confession made at two o'clock in the morning.

MR. GRAF: I don't mean to interject, but the difficulty the defense is laboring under is the depositions recites a time of six o'clock. The testimony yesterday recited a time of six o'clock. The new testimony, on examination of the witness today, recites nine o'clock—coupled with the fact that he states reports were made and kept, stating it was done in the ordinary course of business. I am confused at this point, and I think we have a right to see the reports to clean this up.

[fol. 179] THE COURT: The difficulty is that the records will not help us, because the only time stated is about two a.m., which is half an hour before he was placed under arrest.

MR. DEVINE: I thought Captain Stipps said in reviewing the records he found that he was wrong in stating six o'clock as the first time?

THE COURT: I think the record will show what he said was when he got back from Concord, and when they called him.

WITNESS: Yes; when I got the call.

THE COURT: I understand that the State has no records and will have no records at any time which will show any time element with reference to the statement.

MR. MAYNARD: I didn't make that statement. I have the statement which refers—

THE COURT: My point is from the statement which the Captain has made, if I had not seen your records I would assume that the report which you have is a report given at times when the entire work of the day had been conducted. This obviously is not so. The report [fol. 180] starts at two a.m., does it not? It is not a complete day's report of the officer?

MR. MAYNARD: No, Your Honor.

THE COURT: I assume that you have no other report by the officer which gives a report of the work he did during the day, stating the time. I am not trying to preclude you, you understand.

MR. MAYNARD: I don't want to be in the position where in the volume of our reports we cannot show where Officer LeClair, for instance, was at three o'clock in the afternoon.

THE COURT: If you have a report, you may produce it for my examination, at least.

MR. MAYNARD: Well, I will pass it to the Court in the course of our examination.

THE COURT: What I am saying is that this report is not a complete report of the officers' activities for the day, and does not purport to be. I will say that the report which he has in his hand at the present time does not purport to be a report of either officer's activities for the day preceding the day of the arrest. In other words, this report states no time prior to half an hour before the [fol. 181] arrest, and it does not purport to be a report of the officers' activities for the preceding day. If the Attorney General, County Attorney or the police have a report in their records of the trip to Concord and return of Officer Glennon, Detective Sergeant McBain and Officer LeClair, they may produce it for the Court's examination, at least.

MR. DEVINE: All right. May counsel assume as to the times revealed in the reports, those times will be revealed to defense counsel?

THE COURT: Probably.

MR. DEVINE: Thank you, Your Honor.

MR. MAYNARD: We have another report which states he arrived at the station at twelve-forty-five.

THE COURT: That is the defendant?

MR. MAYNARD: Yes.

THE COURT: Well, that has been disclosed to you?

MR. GRAF: We already know that, Your Honor.

THE COURT: All right. Do you have any more questions of Captain Stipps?

[fol. 182] MR. GRAF: No, Your Honor. Off the record—

(Discussion between counsel off the record)

Q (Mr. Graf continuing) Captain, you recall of your own independent recollection testifying that it was your

impression that Mr. Coolidge arrived at the station at approximately two o'clock on February 2nd? Do you recall testifying to that fact?

A It is possible I might have made a mistake there, too. I might have thought the appointment was a two o'clock appointment.

Q That was another mistake?

A Yes.

Q And the six o'clock and nine o'clock was a mistake?

A Yes.

Q Do you know of any other mistakes that you made in your deposition?

A Not at this time.

Q Did you read your deposition before coming in to-day?

A No; about a week after it was written.

Q But you were under oath when you testified?

A Yes. I brought some mistakes to the attention of the justice.

THE COURT: Who?

WITNESS: Attorney Ross.

Q The magistrate?

[fol. 183] A Yes, the magistrate.

Q When did you call these mistakes to his attention?

A He noted them and said he would send them along with the deposition.

MR. GRAF: Brother Bussiere, I was not familiar with any corrections being made in the deposition which was filed with the Court.

MR. BUSSIERE: All I can tell you is the deposition arrived, I forwarded it to Attorney Ross, and he sent it to Captain Stipps, and it was returned.

MR. GRAF: The original deposition was filed with the Court. If there were any changes in it, I am not familiar with them.

THE COURT: Do you want to go through it now?

MR. GRAF: No, but I would like some time to go through it, if there are any changes.

WITNESS: I would like to add that Attorney Ross advised me besides the little differences in that, what I

have read was substantially true, as I read it, and I signed it as it was.

Q But there were no changes made?

A No. He noted them on a piece of paper, but it was [fol. 184] nothing too valuable.

Q He might have changed an "an" to an "a"?

A Well, one thing misquoted was something he said himself. I called it to his attention and he knew he had said something different.

Q Did you change the time from six o'clock to nine o'clock?

A No; I said the way it was it was all right, with the exception I called his attention, and I signed it.

Q Those were just a couple mistakes?

A Yes.

Q And you didn't change them then?

A No.

Q But you do change them now?

A I know they are a mistake now.

MR. GRAF: Fine! No further questions.

MR. BUSSIERE: That will be all, Captain.

MR. MAYNARD: Sergeant McBain

TESTIMONY OF WILLIAM P. McBAIN

Previously sworn; direct examination by Mr. Maynard:

Q You have already been sworn in this case?

A Yes, I have.

Q Sergeant, when you went down to the Coolidge house on the night of February 2, would you tell us in your own words what the reasons were—what the instructions were or what your reasons were for going down [fol. 185] there?

THE COURT: I thought he testified to this yesterday, didn't he? You went all through this yesterday. Is there any reason why you want to repeat it?

MR. MAYNARD: I don't know if he needs to repeat anything. I thought it might be quicker if I went through some of the details with him.

THE COURT: I think he testified yesterday that they went down there for two reasons—one was in connection with the Mason case, and the other was to check on whether or not they had bought a new washing machine. That is correct, isn't it?

THE WITNESS: Yes.

Q Did you go down there to obtain any guns?

THE COURT: He said yesterday he did not.

MR. REYNOLDS: He said not to obtain any special firearms, but they were looking for firearms.

THE COURT: Yes.

Q Was that the purpose of going down there, or was that a general instruction on those days of investigation? [fol. 186] A No, it was not our primary purpose to look for firearms at the Coolidge home.

Q You testified yesterday that you were not looking for any particular firearms?

A That is right.

Q Let me ask you at this time were you spending a considerable part of your time in connection with the investigation of the Mason murder?

A Yes.

Q Up to this time, as part of your investigation of the Mason murder, were you looking for any particular calibre of firearm?

A No; not any particular calibre of gun. No.

Q What were you looking for with respect to firearms?

A It was my belief a twenty-two calibre handgun was what we were looking for.

MR. REYNOLDS: Handgun, sir?

WITNESS: Yes, handgun—revolver, pistol.

Q Did you at the time you went there—did you have any information with respect to the prior visit on the 28th of January, made by Inspectors Glennon and Doyon?

A No, I did not.

Q You hadn't seen any reports on that visit?

A Not at that time.

[fol. 187] Q So you were not aware when you went there as to what, if any, guns Mr. Coolidge might have?

A No.

Q Well, just what was Mrs. Coolidge's attitude?

A Well, prior to visiting the Coolidge home, I inquired from the defendant, Edward Coolidge—

MR. DEVINE: Objection, Your Honor.

THE COURT: That is not responsive to the question.

A Very co-operative.

MR. DEVINE: Let me finish the objection.

MR. MAYNARD: I will withdraw the question. I don't mean to upset people here. I am going to ask the same question again but ask you to be responsive as to how she appeared to you and what her attitude was toward you.

Q What was her attitude?

A Very co-operative; calm, rational. It was a very good interview, I would say.

MR. MAYNARD: No further questions.

MR. DEVINE: No further questions.

MR. MAYNARD: Inspector Glennon.

[fol. 188]

TESTIMONY OF
DONALD F. GLENNON

Previously sworn; direct examination by Mr. Maynard:

Q At the time you went down to Mrs. Coolidge's house on the 2nd of February; at that time did you have any knowledge as to what guns Mr. Coolidge might have had there?

A Only that it was a small calibre gun. I didn't know exactly what we were looking for.

THE COURT: Just a minute. I don't believe you listened to the question, because your answer was not responsive to the question in any way.

WITNESS: I am sorry.

THE COURT: He asked you if you had any knowledge of what guns Mr. Coolidge had at his house.

WITNESS: I am sorry. No, we didn't have any knowledge, or I didn't have any knowledge of the guns he had at the house.

Q At that time you were spending a good deal of your time on the investigation of the Mason murder?

A Yes.

Q In connection with that investigation of the Mason murder, were you looking for any particular gun?

A Yes. We were looking for a small calibre gun—possibly a twenty-two handgun or small calibre—possibly a *seven* on.

[fol. 189] Q You say a small calibre?

A Well, it was not definitely know what we were looking for, I don't believe.

Q Will you tell us what Mrs. Coolidge's attitude was, as it appeared to you, there?

A As Sergeant McBain says, she appeared to be very calm, and very co-operative, and didn't appear to be disturbed too, too much. She appeared calm.

Q And you don't know who she made the coffee for—for herself or someone else?

A No, I don't know who she made it for, but we did partake of a cup of coffee from her.

Q What do you say at to the method in which you received the trousers, jacket and hunting cap from Mrs. Coolidge.

MR. DEVINE: Objection, Your Honor.

THE COURT: This isn't proper rebuttal, of course, because he testified to all of this yesterday.

MR. MAYNARD: I have no further questions, Your Honor.

MR. DEVINE: I have no questions, thank you.

MR. MAYNARD: Assistant Chief Leavitt.

[fol. 190]

TESTIMONY OF
NORMAN W. LEAVITT

Previously sworn; direct examination by Mr. Maynard:

Q Going back to February 2nd of this year, you returned from somewhere on that night?

A Yes, sir, I did.

Q Where did you return from?

A From Kingston, Rhode Island.

Q What time of night did you return?

A It was somewhere in the vicinity of midnight when I arrived at Manchester police headquarters.

Q When you arrived at Manchester police headquarters, was your attention called to any firearms which had been taken in custody by the police, or brought to the station for examination?

A Yes. When I entered the third floor inspector division, I gave the inspector present a statement as to what we would be looking for in a firearm, in a more definite sense than we had previously. At that time they called my attention to four weapons which were laying on the desk in front of me.

Q Did they identify who owned them?

A They said they had been brought in just a short time before from the Coolidge home.

Q Was one of these weapons of the type, and model and manufacture, of the type you were looking for?

A Yes.

[fol. 191] MR. DIVINE: I object, This is not a trial on the merits, and this has nothing to do with the issue before the Court—especially if the Court should order that all these items should be returned to us.

THE COURT: I am puzzled as to the purpose. Obviously what he is saying is hearsay, and I am puzzled as to what you are putting this in for. You don't expect my decision to be made with reference to the importance of the case.

MR. MAYNARD: Certainly not.

THE COURT: What purpose other than to influence me then is this evidence being put in?

MR. MAYNARD: It is put in to show that there was no initiative on the part of the two police officers to pick up any particular firearm, because at that time they had no knowledge of the type of firearm desired; it was only after they had been received at police headquarters that it was then determined that one was of the make and therefore of the type of weapon which the police would then be looking for.

THE COURT: May I say I would find as a fact that I accept the testimony of the three previous police-[fol. 192] men who testified that at the time the weapons were picked up they were not sure of the calibre or type of weapon they were looking for.

MR. MAYNARD: That is our only purpose.

MR. REYNOLDS: We still have a motion pending that that be stricken.

THE COURT: It may be stricken. The evidence is obviously unnecessary, since I am finding that as a fact.

MR. MAYNARD: I have no protest, Your Honor.

THE COURT: I thought you looked as though you were going to.

MR. MAYNARD: I do want to get in testimony about the toque at this time.

Q Was there any item which would be described as a "woolen toque" in the articles you saw—

A On February 7th, when I opened a sweeper type bag containing items which the officers brought to headquarters, I noted in the contents there was a red and black hunting jacket, two pair grayish blue hunting trousers, a black leather fur-lined glove, a wire coat-hanger; when I looked in the pocket of the hunting jacket I found an olive-green knitted woolen toque, and in another pocket I found a box of fifty live rounds of twenty-two ammunition.

THE COURT: Is this the box of live ammunition [fol. 193] which has been mentioned before?

MR. MAYNARD: I think it is the same one and someone put it in the pocket.

THE COURT: Oh, I see. You mean the officer put it in the pocket after he took it from the glove compartment?

MR. MAYNARD: Yes; he took it and put it in the pocket. I think that is the explanation.

THE COURT: I was a little startled.

MR. REYNOLDS: Yes; I was, too. I knew the State has the burden of representing to us the items taken. I would like to have the State put on witnesses to verify this. I am thoroughly confused about this and think I have the right to be straightened out on it.

THE COURT: I am not sure that I am. I understand these items which you have described are all of the items there were there?

WITNESS: Yes, sir.

THE COURT: Did someone, at some point, make a list of them at the police station?

WITNESS: Yes, sir, I believe it is contained in the report.

THE COURT: Whose report?

[fol. 194] WITNESS: I think—there was one mention made of the toque in the report, unless I am mistaken there. I believe I was the first one to discover it in the pocket of the hunting jacket. McBain's report, I believe, has a mention of the second pair of trousers and the ammunition he took from the Pontiac, as coming from the Pontiac.

THE COURT: You have identified them, but I think they were not in any previous list. But that was the only box—

WITNESS: If I may make a correction, it was a long rifle—there was a short and long rifle, and these were for a long rifle.

THE COURT: I didn't realize there was that difference. The long rifle has a longer range?

WITNESS: Yes. It is a higher powered rifle.

THE COURT: I have no questions.

MR. MAYNARD: I would like to have the record show that the Court does not think I would put in anything which would prejudice the Court's impression of the case, because I—

[fol. 195] THE COURT: I am disturbed that you feel that way, Brother Maynard.

MR. MAYNARD: And if an apology is in order, I apologize, sir.

THE COURT: And I will apologize to you, too.

MR. REYNOLDS: The thing I would like to have clear in my mind is the report which Detective Sergeant McBain gave to Captain Regan. Then Inspector Glennon made a report to Captain Stipps. I would like to see the lists myself. We have a representation by County Attorney Bussiere and the Attorney General's office—

MR. MAYNARD: The Court ordered us to furnish a report of the items taken. The items taken under the warrants appear under the endorsement of the warrants. We have furnished you with a list and have amended it by pointing out where and pointing out bullets which were picked up by the vacuum cleaner, which we think you ought to have. We have furnished a list of all the things we know of. I don't believe it is incumbent on us to show you the reports of the officers.

MR. REYNOLDS: This is going—we ask that the [fol. 196] Court order the State to produce a revised list so that we can see on one piece of paper a list of all of the items.

THE COURT: I think there is nothing missing from this list except the ambiguity which arises from the reading of one of the warrants, which has omitted some live rounds of more ammunition which was picked up in the dirt of the car.

MR. DEVINE: No, Your Honor. There was a paring knife and other things—three or four items at least, which came out of this hearing.

THE COURT: Excuse me. Sergeant McBain did mention a paring knife. No one has mentioned it but him.

MR. MAYNARD: We have no knowledge that anyone took a paring knife. If we have it, we will be glad to furnish it.

THE COURT: Didn't someone make a list at some time of all that was taken?

MR. KALINSKI: Any list of items taken is contained in reports of the officers. I requested the police to make a list from those reports.

[fol. 197] THE COURT: Then they obviously did not comply with your request.

MR. KALINSKI: I think they did. This is a complete list except for hair, which was spoken about yesterday, and the live ammunition included in the sweepings.

THE COURT: What about the paring knife?

MR. KALINSKI: As I recall the testimony, Sergeant McBain didn't say that he had the paring knife, and the

police haven't any paring knife in their possession. If we had any knowledge of it, it would be on this list.

THE COURT: Would you be good enough, Brother Kalinski, to go through your police reports and certify further that you have examined them and that there is nothing held by the police other than what you have listed or added to your list in any report?

MR. KALINSKI: Yes, Your Honor.

MR. REYNOLDS: Thank you, Your Honor.

THE COURT: I think that is all they want of you, too, sir.

WITNESS: Thank you.

MR. BUSSIERE: We rest, Your Honor.

[fol. 198] THE COURT: The State rests. Do you rest?

MR. DEVINE: Yes, Your Honor, we rest.

THE COURT: I will see counsel in Chambers.

(Conference in Chambers off the record)

(Tentative Findings of Fact previously transcribed and filed)

DEFS. EX. A

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

Search Warrant

HILLSBOROUGH, SS.

[SEAL]

To any State Police Officer, or the Sheriff of any County, or his Deputy, or to any Constable or Police Officer of any City or Town within the State, Greeting:

WHEREAS, Francis P. McGranaghan of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, and has furnished satisfactory evidence that certain objects and things used in the commission of said offense are now concealed in or upon the premises described in the aforesaid and annexed Complaint, and may be removed or may flee before night-day.

WE COMMAND YOU, therefore, to take with you suitable assistants, and to suffer no others to be with you, and to enter and there diligently search in the night-time or day-time the premises described in the annexed Complaint, for the said objects as described in the attached list used in the commission of said offense, and if found, to seize them the same and them safely keep until disposed of according to law, and make return of your proceedings thereon, with an inventory of such things sought as shall be found there, and of such persons things as, being liable to seizure, have been taken by you under this warrant and are still in your custody.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card

waterproof cosmetic case
 white bra, size 34, B cup
 white nylon panties with rosette
 cardigan sweater, light color
 ladies' white crocheted driver's glove, leather palm,
 left
 man's pigskin glove, tan, right
 front section, red cotton jersey cut off ski pajamas
 small pieces cut off crotch of olive green stretch ski
 pants
 pencils and ball point pens
 corner of green silk figured scarf
 blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

Make due return of this warrant to the Municipal Court of Manchester and your doings thereon.

Witness my hand and seal the 19th day of February 1964

/s/ William Maynard
 Justice of the Peace

THE STATE OF NEW HAMPSHIRE

Material Witnesses:

Be it remembered, that on this day of
 A. D. 19 before said Court came

 and acknowledged themselves indebted to the State of
 New Hampshire in the sum of

 dollars each, to be levied upon
 their goods, chattels, lands and tenements, and in default
 thereof upon their bodies, if default be made, in the
 following condition:

THE CONDITION OF THIS OBLIGATION IS SUCH,
That if said above-named persons shall each personally
appear at the SUPERIOR COURT to be holden at
in and for said County, on the
of next, and testify what
they know relative to the within complaint, and not de-
part without order of the court, then this recognizance
to be void.

WITNESS _____ Esquire.

A true copy—Attest:

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MUNICIPAL COURT OF CONCORD, N. H.

Be it remembered, that on this day of
in the year of our Lord one thousand nine hundred and
, before said Court came
as principal and
as sureties, all of said , and severally ac-
knowledged themselves indebted to the State of New
Hampshire in the sum of dollars each,
(*cash-real-estate*) to be levied upon their goods, chattels,
lands and tenements, and in default thereof upon their
bodies, respectively, if default be made, in the following
conditions:

THE CONDITION OF THIS RECOGNIZANCE IS
SUCH that whereas on this day of 19 ,
the above named Principal was brought before said Court,
by virtue of the within warrant issued by said Court, to
answer to the within complaint, under oath charging
said principal with the
crime of at in
said County, and after hearing and due consideration,
was ordered by said Court to recognize with sufficient
sureties, in the sum of dollars each,
to appear at the SUPERIOR COURT next to be holden

at Concord, in and for said County of Merrimack, on the _____ Tuesday of _____ next, and there wait and abide the order of the Court, and not depart without leave until discharged by order of the Court, and stand committed until this order be performed.

Now, if the said _____ shall make his personal appearance at the said SUPERIOR COURT, agreeably to said order, and there wait and abide the order of said Court, and not depart without leave of said Court, until discharged by order of the Court, and in the meantime be of good behavior, and not violate any provision of the public statutes of this State, then this recognizance shall be void.

_____))
 _____)) SURETIES.
 _____))

Witness _____ Esquire.

OFFICER'S RETURN

MERRIMACK, SS.

20 February, 1964

I have, as within commanded, searched the premises described in the within warrant, and herewith return an inventory made by me of the property found upon said premises and of such things as being liable to seizure have been taken by me, and are now in my custody.

INVENTORY

- 1 Ladies white slip, stained
- 1 Ladies white nightgown
- 1 Yellow cello sponge, stained

/s/ Norman W. Leavitt
 Name of Officer

Assistant Chief
 Title of Officer

No. 7298-A

SEARCH WARRANT

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

SS.

Before _____ Esq., Justice.

The above named Respondent was arraigned and plead
guilty and examination.

It is thereupon ordered that said Respondent recognize
with sufficient sureties, in the sum of \$ _____ to
appear at the Superior Court next to be holden at
_____, in and for said County, on the
19 _____, and there wait and abide the order of
the Court, and not depart without leave until discharged
by order of the Court and stand committed until this
order is complied with.

Respondent was arraigned and pled 19
Upon trial he was adjudged guilty.
sentenced to pay a fine of \$ _____ guilty and is
confined at hard labor in the County Jail at _____ or be
_____, House of Correction at
in said County for the term of
days _____ months and stand committed until this
sentence be performed.

Respondent appeals. Thereupon he is required to rec-
ognize with sufficient sureties in the sum of
dollars for his appearance at the next term of the Supe-
rior Court to be holden at _____ in and for
said County on the _____ next,

to prosecute his appeal to effect and to abide the orders of the Court thereon.

February 24, 1964.

This document impounded.

/s/ Alfred J. Chretien
Justice
Manchester Municipal Court

[Filed Feb. 21, 1964, Municipal Court, Manchester, N.H.]

COMPLAINT

To William Maynard a Justice of the Peace within and for the State of New Hampshire.

Francis P. McGranaghan, Chief of Police of Manchester, in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of Hillsborough, aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber rifle, lever action Palomino model 400 S-L-LR, loaded with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of

said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Contrary to the form of the statute in such case made and provided, and against the peace of dignity of the State; and the said complainant further complains that he has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects and things used in the Commission of said offense, now kept, and concealed in or upon certain premises in a laundromat at 712 Valley Street, Manchester, New Hampshire, to wit: objects described on attached list and that the same may be removed before night-day.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card

waterproof cosmetic case

white bra, size 34, B cup

white nylon panties with rosette

cardigan sweater, light color

ladies' white crocheted driver's glove, leather palm,
left

man's pigskin glove, tan, right

front section, red cotton jersey cut off ski pajamas

small pieces cut off crotch of olive green stretch ski
pants

pencils and ball point pens

corner of green silk figured scarf

blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

WHEREFORE, he prays that a warrant may be issued, authorizing the search of the premises aforesaid-seizure of the person aforesaid in the night-time or day-time, and that the said things, persons if found, seized and safely kept until disposed of, according to law, and that the said Edward H. Coolidge, Jr. may be held to answer to this complaint, and that justice may be done in the premises.

/s/ Francis P. McGranaghan

The State of New Hampshire

Hillsborough, ss., February 19, 1964

Personally appeared the above-named Complainant and made oath that the above complaint by him subscribed is, in his belief, true.

Before me,

/s/ William Maynard
 Justice of the Peace

DEFS. EX. B

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

Search Warrant

HILLSBOROUGH, SS.

[SEAL]

To any State Police Officer, or the Sheriff of any County, or his Deputy, or to any Constable or Police Officer of any City or Town within the State, Greeting:

WHEREAS, Francis P. McGranaghan of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, and has furnished satisfactory evidence that certain objects and things used in the commission of said offense are now concealed in or upon the premises described in the aforesaid and annexed Complaint, and may be removed or may flee before night-day.

WE COMMAND YOU, therefore, to take with you suitable assistants, and to suffer no others to be with you, and to enter and there diligently search in the night-time or day-time the premises described in the annexed Complaint, for the said objects as described in the attached list used in the commission of said offense, and if found, to seize them the same and them safely keep until disposed of according to law, and make return of your proceedings thereon, with an inventory of such things sought as shall be found there, and of such persons things as, being liable to seizure, have been taken by you under this warrant and are still in your custody.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives
pink wallet containing photographs and I.D. card
waterproof cosmetic case
white bra, size 34, B cup
white nylon panties with rosette
cardigan sweater, light color
ladies' white crocheted driver's glove, leather palm,
left
man's pigskin glove, tan, right
front section, red cotton jersey cut off ski pajamas
small pieces cut off crotch of olive green stretch ski
pants
pencils and ball point pens
corner of green silk figured scarf
blood
pornographic literature
workshop debris including but not limited to wood
shavings, metal shavings, brass filings
hairs, and fibres

Make due return of this warrant to the Municipal
Court of Manchester and your doings thereon.

Witness my hand and seal the 19th day of February 1964

/s/ William Maynard
Justice of the Peace

THE STATE OF NEW HAMPSHIRE

Material Witnesses:

Be it remembered, that on this day of
A. D. 19 before said Court came

.....
.....
.....
and acknowledged themselves indebted to the State of
New Hampshire in the sum of

dollars each, to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, if default be made, in the following condition:

THE CONDITION OF THIS OBLIGATION IS SUCH, That if said above-named persons shall each personally appear at the SUPERIOR COURT to be holden at _____ in and for said County, on the _____ of _____ next, and testify what they know relative to the within complaint, and not depart without order of the court, then this recognizance to be void.

WITNESS _____ Esquire.

A true copy—Attest:

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MUNICIPAL COURT OF CONCORD, N. H.

Be it remembered, that on this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, before said Court came _____ as principal and _____ as sureties, all of said _____, and severally acknowledged themselves indebted to the State of New Hampshire in the sum of _____ dollars each, (*cash-real-estate*) to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, respectively, if default be made, in the following conditions:

THE CONDITION OF THIS RECOGNIZANCE IS SUCH that whereas on this _____ day of _____ 19____, the above named Principal was brought before said Court, by virtue of the within warrant issued by said Court, to answer to the within complaint, under oath charging

said principal with the
 crime of at in
 said County, and after hearing and due consideration,
 was ordered by said Court to recognize with sufficient
 sureties, in the sum of dollars each,
 to appear at the SUPERIOR COURT next to be holden
 at Concord, in and for said County of Merrimack, on
 the Tuesday of next, and
 there wait and abide the order of the Court, and not
 depart without leave until discharged by order of the
 Court, and stand committed until this order be performed.

Now, if the said
 shall make his personal appearance at the said SUPE-
 RIOR COURT, agreeably to said order, and there wait
 and abide the order of said Court, and not depart without
 leave of said Court, until discharged by order of the
 Court, and in the meantime be of good behavior, and
 not violate any provision of the public statutes of this
 State, then this recognizance shall be void.

_____)
 _____) SURETIES.
 _____)

Witness _____ Esquire.

OFFICER'S RETURN

MERRIMACK, SS.

21 February, 1964

I have, as within commanded, searched the premises
 described in the within warrant, and herewith return an
 inventory made by me of the property found upon said
 premises and of such things as being liable to seizure
 have been taken by me, and are now in my custody.

INVENTORY

Vacuum sweepings from floor mats,
 seat cushions, and trunk mats
 Piece of fiber insulation from left
 front floor mat with reddish stain

/s/ Norman W. Leavitt
 Name of Officer

Assistant Chief
 Title of Officer

St. No. 7298-A

SEARCH WARRANT

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

SS.

Before _____ Esq., Justice.

The above named Respondent was arraigned and plead
 guilty and examination.

It is thereupon ordered that said Respondent recognize
 with sufficient sureties, in the sum of \$ _____ to
 appear at the Superior Court next to be holden at
 _____, in and for said County, on the
 19 _____, and there wait and abide the order of
 the Court, and not depart without leave until discharged
 by order of the Court and stand committed until this
 order is complied with.

Respondent was arraigned and pled
 Upon trial he was adjudged
 sentenced to pay a fine of \$ _____

19
 guilty.
 guilty and is
 or be

confined at hard labor in the County Jail at
 , House of Correction at
 in said County for the term of
 days months and stand committed until this
 sentence be performed.

Respondent appeals. Thereupon he is required to recognize with sufficient sureties in the sum of dollars for his appearance at the next term of the Superior Court to be holden at in and for said County on the next, to prosecute his appeal to effect and to abide the orders of the Court thereon.

March 24, 1964—

This document is hereby impounded.

/s/ William L. Phinney
 WILLIAM L. PHINNEY
 Special Justice
 Manchester Municipal Court

[Filed Mar. 24, 1964, Municipal Court, Manchester, N.H.]

COMPLAINT

To William Maynard a Justice of the Peace within and for the State of New Hampshire.

Francis P. McGranaghan, Chief of Police of Manchester, in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber rifle, lever action Palomino model 400 S-L-LR, loaded

with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Contrary to the form of the statute in such case made and provided, and against the peace of dignity of the State; and the said complainant further complains that he has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects and things used in the Commission of said offense, now kept, and concealed in or upon a certain vehicle, to wit: 1951 Pontiac two-door sedan, Green, N.H. Regis. No. IG 719, Serial No. F 605270 3, to wit: objects described on attached list and that the same may be removed before night-day.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card

waterproof cosmetic case

white bra, size 34, B cup
 white nylon panties with rosette
 cardigan sweater, light color
 ladies' white crocheted driver's glove, leather palm,
 left
 man's pigskin glove, tan, right
 front section, red cotton jersey cut off ski pajamas
 small pieces cut off crotch of olive green stretch ski
 pants
 pencils and ball point pens
 corner of green silk figured scarf
 blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

WHEREFORE, he prays that a warrant may be issued,
 authorizing the search of the premises aforesaid-seizure
 of the person aforesaid in the night-time or day-time,
 and that the said things, persons if found, seized and
 safely kept until disposed of, according to law, and that
 the said Edward H. Coolidge, Jr. may be held to answer
 to this complaint, and that justice may be done in the
 premises.

/s/ Francis P. McGranaghan

The State of New Hampshire

Hillsborough, ss., February 19, 1964

Personally appeared the above-named Complainant and
 made oath that the above complaint by him subscribed
 is, in his belief, true.

Before me,

/s/ William Maynard
 Justice of the Peace

DEFS. EX. C

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

Search Warrant

HILLSBOROUGH, SS.

[SEAL]

To any State Police Officer, or the Sheriff of any County, or his Deputy, or to any Constable or Police Officer of any City or Town within the State, Greeting:

WHEREAS, Francis P. McGranaghan of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, and has furnished satisfactory evidence that certain objects and things used in the commission of said offense are now concealed in or upon the premises described in the aforesaid and annexed Complaint, and may be removed or may flee before night-day.

WE COMMAND YOU, therefore, to take with you suitable assistants, and to suffer no others to be with you, and to enter and there diligently search in the night-time or day-time the premises described in the annexed Complaint, for the said objects as described in the attached list used in the commission of said offense, and if found, to seize them the same and them safely keep until disposed of according to law, and make return of your proceedings thereon, with an inventory of such things sought as shall be found there, and of such persons things as, being liable to seizure, have been taken by you under this warrant and are still in your custody.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives
pink wallet containing photographs and I.D. card
waterproof cosmetic case
white bra, size 34, B cup
white nylon panties with rosette
cardigan sweater, light color
ladies' white crocheted driver's glove, leather palm,
left
man's pigskin glove, tan, right
front section, red cotton jersey cut off ski pajamas
small pieces cut off crotch of olive green stretch ski
pants
pencils and ball point pens
corner of green silk figured scarf
blood
pornographic literature
workshop debris including but not limited to wood
shavings, metal shavings, brass filings
hairs, and fibres

Make due return of this warrant to the Municipal
Court of Manchester and your doings thereon.

Witness my hand and seal the 19th day of February 1964

/s/ William Maynard
Justice of the Peace

THE STATE OF NEW HAMPSHIRE

Material Witnesses:

Be it remembered, that on this day of
A. D. 19 before said Court came

and acknowledged themselves indebted to the State of
New Hampshire in the sum of

dollars each, to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, if default be made, in the following condition:

THE CONDITION OF THIS OBLIGATION IS SUCH, That if said above-named persons shall each personally appear at the SUPERIOR COURT to be holden at _____ in and for said County, on the _____ of _____ next, and testify what they know relative to the within complaint, and not depart without order of the court, then this recognizance to be void.

WITNESS _____ Esquire.

A true copy—Attest:

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MUNICIPAL COURT OF CONCORD, N. H.

Be it remembered, that on this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, before said Court came _____ as principal and _____ as sureties, all of said _____, and severally acknowledged themselves indebted to the State of New Hampshire in the sum of _____ dollars each, (*cash-real-estate*) to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, respectively, if default be made, in the following conditions:

THE CONDITION OF THIS RECOGNIZANCE IS SUCH that whereas on this _____ day of _____ 19____, the above named Principal was brought before said Court, by virtue of the within warrant issued by said Court, to answer to the within complaint, under oath charging

said principal with the
 crime of at in
 said County, and after hearing and due consideration,
 was ordered by said Court to recognize with sufficient
 sureties, in the sum of dollars each,
 to appear at the SUPERIOR COURT next to be holden
 at Concord, in and for said County of Merrimack, on
 the Tuesday of next, and
 there wait and abide the order of the Court, and not
 depart without leave until discharged by order of the
 Court, and stand committed until this order be performed.

Now, if the said
 shall make his personal appearance at the said SUPE-
 RIOR COURT, agreeably to said order, and there wait
 and abide the order of said Court, and not depart without
 leave of said Court, until discharged by order of the
 Court, and in the meantime be of good behavior, and
 not violate any provision of the public statutes of this
 State, then this recognizance shall be void.

_____)
 _____) SURETIES.
 _____)

Witness _____ Esquire.

OFFICER'S RETURN

MERRIMACK, SS.

21 February, 1964

I have, as within commanded, searched the premises
 described in the within warrant, and herewith return an
 inventory made by me of the property found upon said
 premises and of such things as being liable to seizure
 have been taken by me, and are now in my custody.

INVENTORY

Vacuum sweepings from floor mats,
 seat cushions, an trunk mats
 Carborundum honing stone with red-
 dish stains, boxed
 Yellow towel, stained

/s/ Norman W. Leavitt
 Name of Officer

Assistant Chief
 Title of Officer

St. No. 7298-D

SEARCH WARRANT

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

ss.

Before _____ Esq., Justice.

The above named Respondent was arraigned and plead
 guilty and _____ examination.

It is thereupon ordered that said Respondent recognize
 with sufficient sureties, in the sum of \$ _____ to
 appear at the Superior Court next to be holden at
 _____, in and for said County, on the
 19 _____, and there wait and abide the order of
 the Court, and not depart without leave until discharged
 by order of the Court and stand committed until this
 order is complied with.

Respondent was arraigned and pled _____ 19
 Upon trial he was adjudged _____ guilty.
 guilty and is

sentenced to pay a fine of \$ _____ or be
 confined at hard labor in the County Jail at
 _____, House of Correction at
 _____ in said County for the term of
 _____ days _____ months and stand committed until this
 sentence be performed.

Respondent appeals. Thereupon he is required to recognize with sufficient sureties in the sum of _____ dollars for his appearance at the next term of the Superior Court to be holden at _____ in and for said County on the _____ next, to prosecute his appeal to effect and to abide the orders of the Court thereon.

March 24, 1964—

This document is hereby impounded.

/s/ William L. Phinney
 WILLIAM L. PHINNEY
 Special Justice
 Manchester Municipal Court

[Filed Mar. 24, 1964, Municipal Court, Manchester, N.H.]

COMPLAINT

To William Maynard a Justice of the Peace within and for the State of New Hampshire.

Francis P. McGranaghan, Chief of Police of Manchester, in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of Hillsborough, aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber

rifle, lever action Palomino model 400 S-L-LR, loaded with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Contrary to the form of the statute in such case made and provided, and against the peace of dignity of the State; and the said complainant further complains that he has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects and things used in the Commission of said offense, now kept, and concealed in or upon a certain vehicle, to wit: 1963 Chevrolet Convertible, aqua, NH Regis No. HP 688, Serial No. 31767 G 120497, to wit: objects described on attached list and that the same may be removed before night-day.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card
waterproof cosmetic case

white bra, size 34, B cup
 white nylon panties with rosette
 cardigan sweater, light color
 ladies' white crocheted driver's glove, leather palm,
 left
 man's pigskin glove, tan, right
 front section, red cotton jersey cut off ski pajamas
 small pieces cut off crotch of olive green stretch ski
 pants
 pencils and ball point pens
 corner of green silk figured scarf
 blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

WHEREFORE, he prays that a warrant may be issued,
 authorizing the search of the premises aforesaid-seizure
 of the person aforesaid in the night-time or day-time,
 and that the said things, persons if found, seized and
 safely kept until disposed of, according to law, and that
 the said Edward H. Coolidge, Jr. may be held to answer
 to this complaint, and that justice may be done in the
 premises.

/s/ Francis P. McGranaghan

The State of New Hampshire

Hillsborough, ss., February 19, 1964

Personally appeared the above-named Complainant and
 made oath that the above complaint by him subscribed
 is, in his belief, true.

Before me,

/s/ William Maynard
 Justice of the Peace

DEFS. EX. D

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

Search Warrant

HILLSBOROUGH, SS.

[SEAL]

To any State Police Officer, or the Sheriff of any County, or his Deputy, or to any Constable or Police Officer of any City or Town within the State, Greeting:

WHEREAS, Francis P. McGranaghan of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, and has furnished satisfactory evidence that certain objects and things used in the commission of said offense are now concealed in or upon the premises described in the aforesaid and annexed Complaint, and may be removed or may flee before night-day.

WE COMMAND YOU, therefore, to take with you suitable assistants, and to suffer no others to be with you, and to enter and there diligently search in the night-time or day-time the premises described in the annexed Complaint, for the said objects as described in the attached list used in the commission of said offense, and if found, to seize them the same and them safely keep until disposed of according to law, and make return of your proceedings thereon, with an inventory of such things sought as shall be found there, and of such persons things as, being liable to seizure, have been taken by you under this warrant and are still in your custody.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives
pink wallet containing photographs and I.D. card
waterproof cosmetic case
white bra, size 34, B cup
white nylon panties with rosette
cardigan sweater, light color
ladies' white crocheted driver's glove, leather palm,
left
man's pigskin glove, tan, right
front section, red cotton jersey cut off ski pajamas
small pieces cut off crotch of olive green stretch ski
pants
pencils and ball point pens
corner of green silk figured scarf
blood
pornographic literature
workshop debris including but not limited to wood
shavings, metal shavings, brass filings
hairs, and fibres

Make due return of this warrant to the Municipal
Court of Manchester and your doings thereon.

Witness my hand and seal the 19th day of February 1964

/s/ William Maynard
Justice of the Peace

THE STATE OF NEW HAMPSHIRE

Material Witnesses:

Be it remembered, that on this day of
A. D. 19 before said Court came

and acknowledged themselves indebted to the State of

New Hampshire in the sum of _____ dollars each, to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, if default be made, in the following condition:

THE CONDITION OF THIS OBLIGATION IS SUCH, That if said above-named persons shall each personally appear at the SUPERIOR COURT to be holden at _____ in and for said County, on the _____ of _____ next, and testify what they know relative to the within complaint, and not depart without order of the court, then this recognizance to be void.

WITNESS _____ Esquire.

A true copy—Attest:

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MUNICIPAL COURT OF CONCORD, N. H.

Be it remembered, that on this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, before said Court came _____ as principal and _____ as sureties, all of said _____, and severally acknowledged themselves indebted to the State of New Hampshire in the sum of _____ dollars each, (*cash-real-estate*) to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, respectively, if default be made, in the following conditions:

THE CONDITION OF THIS RECOGNIZANCE IS SUCH that whereas on this _____ day of _____ 19 _____, the above named Principal was brought before said Court, by virtue of the within warrant issued by said Court, to

answer to the within complaint, under oath charging
 said principal with the
 crime of at in
 said County, and after hearing and due consideration,
 was ordered by said Court to recognize with sufficient
 sureties, in the sum of dollars each,
 to appear at the SUPERIOR COURT next to be holden
 at Concord, in and for said County of Merrimack, on
 the Tuesday of next, and
 there wait and abide the order of the Court, and not
 depart without leave until discharged by order of the
 Court, and stand committed until this order be performed.

Now, if the said
 shall make his personal appearance at the said SUPE-
 RIOR COURT, agreeably to said order, and there wait
 and abide the order of said Court, and not depart without
 leave of said Court, until discharged by order of the
 Court, and in the meantime be of good behavior, and
 not violate any provision of the public statutes of this
 State, then this recognizance shall be void.

_____))
 _____)) SURETIES.
 _____))

Witness _____ Esquire.

OFFICER'S RETURN

MERRIMACK, SS.

20 February, 1964

I have, as within commanded, searched the premises
 described in the within warrant, and herewith return an
 inventory made by me of the property found upon said
 premises and of such things as being liable to seizure
 have been taken by me, and are now in my custody.

INVENTORY

Debris Specimen from cellar
 1 pair gents leather work gloves
 1 light blue tee shirt
 1 khaki Army type raincoat

/s/ Norman W. Leavitt

Name of Officer

Assistant Chief

Title of Officer

No. 7298-B HOUSE

SEARCH WARRANT

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

SS.

Before _____ Esq., Justice.

The above named Respondent was arraigned and plead
 guilty and examination.

It is thereupon ordered that said Respondent recognize
 with sufficient sureties, in the sum of \$ _____ to
 appear at the Superior Court next to be holden at
 _____, in and for said County, on the
 19 _____, and there wait and abide the order of
 the Court, and not depart without leave until discharged
 by order of the Court and stand committed until this
 order is complied with.

Respondent was arraigned and pled
 Upon trial he was adjudged
 sentenced to pay a fine of \$ _____

19
 guilty.
 guilty and is
 or be

confined at hard labor in the County Jail at
 , House of Correction at
 in said County for the term of
 days months and stand committed until this
 sentence be performed.

Respondent appeals. Thereupon he is required to recognize with sufficient sureties in the sum of dollars for his appearance at the next term of the Superior Court to be holden at in and for said County on the next, to prosecute his appeal to effect and to abide the orders of the Court thereon.

February 24, 1964.

This document impounded.

/s/ Alfred J. Chretien
 Justice
 Manchester Municipal Court

[Filed Feb. 21, 1964, Municipal Court, Manchester, N.H.]

COMPLAINT

To William Maynard a Justice of the Peace within and for the State of New Hampshire.

Francis P. McGranaghan, Chief of Police of Manchester, in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of Hillsborough, aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber rifle, lever action Palomino model 400 S-L-LR, loaded

with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Contrary to the form of the statute in such case made and provided, and against the peace of dignity of the State; and the said complainant further complains that he has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects and things used in the Commission of said offense, now kept, and concealed in or upon certain premises in 312 Seames Drive, Manchester, New Hampshire, to wit: objects described on attached list and that the same may be removed before night-day.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card
waterproof cosmetic case

white bra, size 34, B cup
 white nylon panties with rosette
 cardigan sweater, light color
 ladies' white crocheted driver's glove, leather palm,
 left
 man's pigskin glove, tan, right
 front section, red cotton jersey cut off ski pajamas
 small pieces cut off crotch of olive green stretch ski
 pants
 pencils and ball point pens
 corner of green silk figured scarf
 blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

WHEREFORE, he prays that a warrant may be issued, authorizing the search of the premises aforesaid-seizure of the person aforesaid in the night-time or day-time, and that the said things, persons if found, seized and safely kept until disposed of, according to law, and that the said Edward H. Coolidge, Jr. may be held to answer to this complaint, and that justice may be done in the premises.

/s/ Francis P. McGranaghan

The State of New Hampshire

Hillsborough, ss., February 19, 1964

Personally appeared the above-named Complainant and made oath that the above complaint by him subscribed is, in his belief, true.

Before me,

/s/ William Maynard
 Justice of the Peace

DEFS. EX. E

8-31-1964

State 3136

March 4, 1964—

The defendant having been indicted by the Grand Jury and having been arraigned before the Superior Court—no further proceeding is necessary.

/s/ Alfred J. Chretien
Justice
Manchester Municipal Court

All Search Warrants and returns filed with this Court to be transmitted to the Superior Court forthwith.

/s/ Alfred J. Chretien
Justice
Manchester Municipal Court

A True Copy:

Attest:

/s/ André J. Barbeau
Clerk
Manchester Municipal Court

[SEAL]

[Filed Feb. 20, 1964 Municipal Court Manchester, N.H.]

No. 7298

COMPLAINT AND WARRANT

THE STATE, COMP'T.

vs.

EDWARD H. COOLIDGE, JR.

February 19, 1964

, SS.

MUNICIPAL COURT OF

, N. H.

Before

Esq., Justice

_____, 19__

Respondent being arraigned plead _____ guilty.
 Upon trial he was adjudged _____ guilty. Sen-
 tenced to pay a fine, of \$ _____ or to be confined
 in the _____ at _____
 for the term of _____ days,
 and stand committed until this
 sentence be performed.

_____, Justice
 Respondent appeals. Thereupon he is required to rec-
 ognize, with sufficient sureties, in the sum of _____
 dollars, for his appearance at the term of the
 Superior Court next to be holden at _____
 in said County on the first Tuesday of _____
 next, there to enter and prosecute his appeal to effect, to
 abide the orders of the Court thereon, and be of good
 behavior in the meantime.

_____, Justice

MURDER

Feb. 20, 1964

Before CHRETIEN, J.

Not Guilty. Con'td. for examination on probable cause to Mar. 4, 1964 ordered held w/o bail at Hillsborough Co. Jail.

Att'y. William [illegible] representing defendant, excepted to cont. setting date for examination to Mar. 4, 1964.

[Illegible] issued to Jail.

THE STATE OF NEW HAMPSHIRE

COMPLAINT

To the Municipal Court of Manchester

Francis P. McGranaghan, Chief of Police of Manchester in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the thirteenth day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of Hillsborough aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber rifle, lever action Palomino model 400 S-L-LR, loaded with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward

H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Wherefore, the said Complainant prays that the said Respondent, Edward H. Coolidge, Jr. may be held to answer to this Complaint, and that justice may be done in the premises.

Hillsborough, ss. Feb. 19, 1964

Personally appeared Francis P. McGranaghan and made oath that the above Complaint by him subscribed is, in his belief, true.

Before me,

/s/ William Maynard
Justice of the Peace

A True Copy:

Attest:

/s/ André J. Barbeau
Clerk
Manchester Municipal Court

[SEAL]

THE STATE OF NEW HAMPSHIRE

WARRANT

HILLSBOROUGH, SS.

[SEAL]

*To any State Police Officer, or the Sheriff of any County,
or his Deputy, or to any Constable or Police Officer
of any City or Town within the State, Greeting:*

WHEREAS, Francis P. McGranaghan, Chief of Police of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough.

WE COMMAND YOU To take the said Edward H. Coolidge, Jr. (to be found in your precinct) and bring him before the Municipal Court of Manchester in said County of Hillsborough.

AND WE FURTHER COMMAND YOU To summon

to appear and testify what he know relating to said Complaint, when and where you may have said Respondent before said Municipal Court for trial.

Dated the nineteenth day of February, 1964

/s/ William Maynard
Justice of the Peace

, ss. Feb. 19, 1964

I have arrested the body of the above named Edward
H. Coolidge, Jr. and summoned said _____

_____ and now have him before the Municipal Court aforesaid,
as commanded.

/s/ Norman W. Leavitt
Name of Officer

Ass't. Chief
Title of Officer

A True Copy:

Attest:

/s/ André J. Barbeau
Clerk
Manchester Municipal Court

[SEAL]

DEFS. Ex. F

8-31-1964

State 3136

ARREST REPORT

MANCHESTER, N. H. POLICE DEPARTMENT

Defendant: Edward H. Coolidge Jr. DOB: 6-8-37
(Last) (First) (Middle)

Address: 312 Seames Drive, Manchester, N.H.

Date & Time of Arrest: 2/3/64

Place of Arrest: Police Headquarters

Elements of Offense: Grand Larceny

1. Time & Date: July 1, 1962
2. Location: Cote's Bros. Bakery 87 Elm St., Manchester, N.H.
3. Identification of Defendant: We can identify, this subject admitted to us the theft of a money bag, containing \$388.95 from the building off Cote Bros. Inc. 87 Elm St.

4.

5.

6.

(USE REVERSE SIDE FOR ADDED INFORMATION)

172

Veh Reg: State: _____ No. _____

Type: _____ Year: _____

Color: _____

Make: _____

Towed To: _____ Authority: _____

For OUIL Cases Complete Following:

Alcometer Reading: _____ Blood: Yes ☐ No ☐

Sample Turned Over To: _____ By Dr: _____

Date and Time of Drs. Examination: _____

Names & Addresses of Witnesses: _____

Signature of Arresting Officer [Illegible]

Court Date: 2-3-64 _____ Bail: _____

Date & Time Booked: 2-3-64 2:30 A.M. Cell No. #12

Signature of Booking Officer [Illegible]

DEFS. EX. G

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

[State Seal]

ATTORNEY GENERAL
CONCORD

Attorney General
William Maynard
Deputy Attorney General
George S. Pappagianis

Assistant Attorneys General
William J. O'Neil
William F. Cann
Alexander J. Kalinski
Ronald H. Bean
Robert W. Moran
Attorneys
Irma A. Matthews
George L. Manias
Legal Research Assistant
Marion G. Alexander

July 15, 1964

John A. Graf, Esq.
Forty Stark Street
Manchester, New Hampshire

Dear Brother Graf:

Re: State v. Edward Coolidge, Jr.

In accordance with Judge Griffith's order at the most recent hearing upon motions in the above-entitled action, the following is a list of Edward Coolidge's personal property in the possession of the prosecution:

- 1 Marlin 30-30 rifle, Model 1936, Serial # B998
- 1 Mossberg Shotgun 410 Gauge Model 183DA
- 1 Remington Shotgun 16 Gauge Model 1148 Serial # 5518747

- 1 Mossberg rifle, Cal. 22, Model Palomino 400
- 2 pair of men's trousers
- 1 red hunting jacket
- 1 wool toque
- 1 black leather fur-lined glove
- 1 coat hanger
- 1 box of .22 cal. bullets

Also the clothes worn by the respondent at the time of arrest which includes: 1 man's jacket, one pair of man's trousers, shoes and socks, a t-shirt and a shirt.

Very truly yours,

/s/ Alexander J. Kalinski
ALEXANDER J. KALINSKI
Assistant Attorney General

AJK:aml

DEFS. EX. H

3-31-1964

State 3136

- 1 Palomino Model 400 22 Cal. S-L-LR
- 1 16 Ga. for 2¾ or Shorter Shells Ser. # 5518747 Remington Model 11-48
- 1 Marlin—Model 1936 Ser. # B 998
- 1 410 Ga—3 inch Shot gun Model 183D-A
Of Mossberg & Sons Inc.
- 1 Red Jacket
- 1 pr. Uniform Trousers—

I have received the above items from Joanne Coolidge for examination.

/s/ Insp. D. Glennon
Manchester Pol.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS

APRIL TERM 1964

#3136 & #3137

THE STATE OF NEW HAMPSHIRE

v.

EDWARD H. COOLIDGE, JR.

MOTION ON PETITION TO QUASH

NOW COME J. Murray Devine, Matthias J. Reynolds
and John A. Graf, counsel for Edward H. Coolidge, Jr.,
and represent:

1. That at the hearing on the petitions held August
31 and September 1, 1964, counsel for the defendant
through mistake and inadvertence neglected to introduce
as an exhibit the motor vehicle registrations of the 1963
Chevrolet convertible and the 1951 Pontiac.

2. That it is essential for the Court to have these as
exhibits in order to make its findings of fact and rulings
of law.

WHEREFORE, your petitioners pray that the motor
vehicle registrations attached to the enclosed Affidavit be
admitted as an exhibit.

Respectfully submitted,

J. MURRAY DEVINE
MATTHIAS J. REYNOLDS
JOHN A. GRAF

By: /s/ Matthias J. Reynolds
Attorneys for
Edward H. Coolidge, Jr.

I hereby certify that a true copy of the above Petition
to Quash was sent to Attorney General William Maynard
and County Attorney Emile Bussiere this third day of
September 1964.

/s/ Matthias J. Reynolds

AFFIDAVIT IN SUPPORT OF
PROPOSED EXHIBITS

I, Matthias J. Reynolds, co-counsel for the defendant, Edward H. Coolidge, Jr., certify that the attached motor vehicle registrations for a 1963 Chevrolet and a 1951 Pontiac for the registration year 1963-1964 are identical copies of those registrations obtained by me from the New Hampshire Motor Vehicle Department.

I further certify that the copies going to the Court are the exact copies received from the Motor Vehicle Department and the copies going to opposing counsel are xerox copies of those which were made under my direction and which I have verified as being identical in all respects.

Plate Number HP 6FF Do Not Write		Print Type of Vehicle If Other Than Passenger Car		APPLICATION 1963-64	
Type or Print in Ink Mailing Address			Description of Vehicle		County HILLSBORO
Name EDWARD H. COOLIDGE JR.			Make CHEVROLET		Year of Mfg. 1963
312 SEAINES DRIVE			Type CO. RV.		Color ASUA
MANCHESTER N. H.			Serial No. 317676 120497		No. of 6
Legal Residence — If Other Than Mailing Address			Gross Weight 4150		Model No.
Dep't's Exhibit 4-11			TYPE OF REG. CHECK ONE		
			Automobile <input checked="" type="checkbox"/> Farm <input type="checkbox"/>		
			Commercial <input type="checkbox"/> Trader <input type="checkbox"/>		
			Boat <input type="checkbox"/> Motorcycle <input type="checkbox"/>		
			Agricultural <input type="checkbox"/> Trailer <input type="checkbox"/>		
44-653 303499			12-28-63		

No. of Axles	Weight Empty	Weight of Load	Gross Weight
How is this vehicle owned? Individually (X) Jointly () Corp. () Lessee () Explain			
Name of Insurance Company Covering This Vehicle FIREPLAZERS			
All Poll and Head Taxes for which (1 and two are) liable have been paid YES			
Date of Birth of Registrant	Month	Day	Year
	6	8	1939
Registrant's Signature Edward H. Coolidge Jr.			
If Other Than Owner Give Title			
This application is signed under the penalty of perjury, both cards must be properly filled out or they will be returned. Make payment to — MOTOR VEHICLE DIVISION, Concord, N. H.			

Plate Number <div style="font-size: 1.5em; font-family: cursive;">E 6719</div> Do Not Write	Print Type of Vehicle If Other Than Passenger Car <div style="font-size: 1.5em; font-family: cursive;">1963-64</div>										
Type or Print in Int mailing Address <div style="font-family: cursive;">EDWARD H COOLIDGE JR 312 SEADMS DRIVE MANCHESTER N. H.</div>	Description of Vehicle <div style="font-family: cursive;">AUTO</div> Make <div style="font-family: cursive;">PONTIAC</div> Type <div style="font-family: cursive;">4 DR SEDAN</div> Serial No. <div style="font-family: cursive;">F60527032</div> Gross Weight <div style="font-family: cursive;">4105</div>	County <div style="font-family: cursive;">HILLSBORO</div> Year of Mfg. <div style="font-family: cursive;">1951</div> Color <div style="font-family: cursive;">GREEN</div> No. Cyl. <div style="font-family: cursive;">6</div> Model No.									
Residence — If Other Than Mailing Address <div style="font-family: cursive;">DXTS EXHIBIT T</div>	TYPE OF REG. CHECK ONE <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Automobile <input checked="" type="checkbox"/></td> <td style="width: 50%;">Farm <input type="checkbox"/></td> </tr> <tr> <td>Commercial <input type="checkbox"/></td> <td>Tractor <input type="checkbox"/></td> </tr> <tr> <td>Official <input type="checkbox"/></td> <td>Motorcycle <input type="checkbox"/></td> </tr> <tr> <td>Agricultural <input type="checkbox"/></td> <td>Trailer <input type="checkbox"/></td> </tr> </table>			Automobile <input checked="" type="checkbox"/>	Farm <input type="checkbox"/>	Commercial <input type="checkbox"/>	Tractor <input type="checkbox"/>	Official <input type="checkbox"/>	Motorcycle <input type="checkbox"/>	Agricultural <input type="checkbox"/>	Trailer <input type="checkbox"/>
Automobile <input checked="" type="checkbox"/>	Farm <input type="checkbox"/>										
Commercial <input type="checkbox"/>	Tractor <input type="checkbox"/>										
Official <input type="checkbox"/>	Motorcycle <input type="checkbox"/>										
Agricultural <input type="checkbox"/>	Trailer <input type="checkbox"/>										

No. of Axles	Weight Empty	Weight of Load	Gross Weight

How is this vehicle owned? Individually ☒ Jointly () Corp. () Lease () Exempt

Name of Insurance Company Covering This Vehicle AETNA

All Poll and Head Taxes for which () car () are are) liable have been paid yes

Date of Birth of Registrant
 Month 1 Day 8 Year 1937

Registrant's Signature Edward H Coolidge Jr

If Other Than Owner
 Give Title

This application is signed under the penalty of perjury, both cards must be properly filled out or they will be returned. Make payment to — MOTOR VEHICLE DIVISION, Concord, N. H.

DO NOT MAIL CASH

/s/ Matthias J. Reynolds
 MATTHIAS J. REYNOLDS

Personally appeared before me this third day of September 1964, the above named, Matthias J. Reynolds, and under oath swore that the above statements made by him are true and correct.

/s/ [Illegible]
Justice of the Peace

I, Matthias J. Reynolds, certify that on this third day of September 1964, a copy of the within Petition-Motion and accompanying Affidavit were mailed to Attorney General William Maynard and County Attorney Emile Bussiere.

/s/ Matthias J. Reynolds
MATTHIAS J. REYNOLDS

St. 3136

St. 3137

MOTION THAT MOTOR VEHICLE REGISTRATIONS BE ADMITTED AS EXHIBITS ON PETITION TO QUASH AND AFFIDAVIT THERETO

STATE

v

EDWARD H. COOLIDGE, JR.

Motion granted.

/s/ Robert F. Griffith
P.J.

9/11/64

[Filed Sep. 4, 9:40 a.m., 1964, Clerk,
N.H. Superior Court, Hillsborough County.]

DEFS. EX. J

THE STATE OF NEW HAMPSHIRE

[State Seal]

ATTORNEY GENERAL
CONCORD

Attorney General
William Maynard
Deputy Attorney General
George S. Pappagianis

Assistant Attorneys General
William J. O'Neil
William F. Cann
Alexander J. Kalinski
Ronald H. Bean
Robert W. Moran
Attorneys
Irma A. Matthews
George L. Manias
Legal Research Assistant
Marion G. Alexander

September 18, 1964

Honorable Robert F. Griffith
Hillsborough County Superior Court
Nashua, New Hampshire

Re: State v. Edward Coolidge, Jr.

Dear Judge Griffith:

In compliance with the Court's order at the hearings upon the defendant's Petition to Quash held upon August 31, 1964 and September 1, 1964, we certify that the following is a complete list of property of Edward Coolidge in the possession of the prosecution and not obtained under the search warrants:

- 1 Marlin 30-30 rifle, Model 1936, Serial # B 998
- 1 Mossberg Shotgun, 410 Gauge, Model 183 DA
- 1 Remington Shotgun, 16 Gauge, Model 1148, Serial # 5518747

- 1 Mossberg Rifle, cal. .22, Model Palomino 400
- 2 Pair of men's trousers, uniform
- 1 Red plaid hunting jacket
- 1 Green wool toque
- 1 Black leather gents fur lined glove
- 1 Coat hanger
- 1 Box of 50 .22 cal. bullets

Clothes worn by respondent at time of arrest:

- 1 Gents gray jacket
- 1 Gents gray shirt
- 1 Tee shirt
- 1 Pair boxer shorts
- 1 Pair gents sox
- 1 Pair gents shoes
- 1 Pair gents trousers
- 1 Gents brown leather belt

Specimens of scalp, chest, arm, and pubic hair

- 1 Plastic handle kitchen paring knife

The only item which is not included on the previous list is the paring knife. At the hearing Det. Sgt. William McBain testified that he saw a paring knife in the glove compartment of the 1951 Pontiac on Sunday, February 2, 1964, but he couldn't remember whether he took the paring knife or not. The reports indicate that he did take the paring knife. The State attaches no significance to the paring knife and offers to return it without the necessity of any court order.

It should also be mentioned that the State has in its possession the 1951 Pontiac with all of its contents which includes items of personal property which undoubtedly belong to the defendant Coolidge. These items were not returned on the search warrants and no inventory has been made of such contents of the 1951 Pontiac, although the police have examined a number of these items. If

the Court desires, the State will inventory such contents and file it with the Court.

Very truly yours,

/s/ William Maynard
WILLIAM MAYNARD
Attorney General

/s/ Alexander J. Kalinski
ALEXANDER J. KALINSKI
Assistant Attorney General

AJK:w

cc—J. Murray Devine, Esq.
1838 Elm Street
Manchester, N. H.

cc—John A. Graf, Esq.
40 Stark St.
Manchester, N. H.

LIST OF PROPERTY OF EDWARD COOLIDGE, JR.
IN POSSESSION OF STATE NOT OBTAINED
UNDER SEARCH WARRANTS

STATE

v

EDWARD H. COOLIDGE, JR.

St. 3136

St. 3137

[Filed Sep. 18, 1964, Clerk N.H. Superior Court,
Hillsborough County.]

TENTATIVE FINDINGS BY THE COURT ON DEFENDANT'S
PETITION TO QUASH SEARCH WARRANTS, TO RELEASE
ITEMS OF PROPERTY SEIZED, ET CETERA

GRIFFITH, J.

After hearing on petition filed July 22, 1964, the Court finds that this hearing on the motion falls into two general categories of items searched and/or seized. First are a group of items which are contained either on the present list furnished by Assistant Attorney General Kalinski or which will be contained in an amended list to be filed of certain items claimed to have been seized without a search warrant. The circumstances surrounding the acquisition by the police of the items referred to are as follows:

On February 2nd, around one p.m. in the afternoon, Edward Coolidge, Jr., at the request of the police and as a result of a prior interview with Sgt. Doyon and Officer LeClair, went to the police station for the ostensible purpose of taking a lie detector test. His appearance at the police station at one o'clock on Sunday, February 2nd was as a result immediately of a telephone call received by him at his home, from Officer LeClair at eight a.m. in the morning. Some time shortly before four

o'clock in the afternoon, Coolidge went to Concord in company with Officer LeClair and Inspector Glennon, to the State Police Barracks, where he took a lie detector test given him by Sergeant McBain of the State Police. He returned following this test, in an automobile, to Manchester, reaching Manchester at about seven o'clock in the evening, with the same officers.

The Court finds that his presence both at the police station and in the car to and from Concord was, at least up to this point, voluntary. In the course of his lie detector test, the police testified that he admitted the theft of some three hundred dollars from his employer, Cote Brothers, and there was some conversation with Inspector Glennon on the way back to Manchester as to whether or not he would be charged with this theft. He was not formally charged with the theft of the three hundred dollars until two-thirty a.m. in the morning; and the Court finds that he never at any time requested an opportunity to leave the station prior to being charged, but that had he requested it he probably would have been detained either with a formal charge or without a formal charge being made.

Mrs. Joanne Coolidge, wife of Edward Coolidge, Jr., who had been informed of the requested presence of Edward Coolidge, Jr. at the police station, was called for by the police herself some time about two-thirty, by two policemen who took her in a police car to the station, where she had a short conversation with her husband and a conversation with Captain Stipps of the police force, which is not particularly relevant to this case, except that she alleges and he agrees that he urged her to tell the truth or she might be in trouble if she didn't. She returned to her home in one of the two family cars, a Chevrolet.

Mrs. Coolidge, Sr., mother of Edward Coolidge, Jr. had been called to the Coolidge home when Mrs. Coolidge, Jr. went to the police station at about two-thirty, for the purpose of babysitting, and was at the house at ten-thirty p.m. when Sergeant McBain and Inspector Glennon called at the home, dressed in plain clothes. They went to the house generally for the purpose of questioning Mrs. Cool-

idge, Jr. about the theft from Cote Brothers, and further particulars about the Mason murder, on which both Sergeant McBain and Inspector Glennon were generally assigned. In the course of their questioning, they inquired if Mr. Coolidge, Jr. had any firearms. They were informed by Mrs. Coolidge that he had, and she went, in company with them, into the bedroom, to a closet where there were four guns—two shotguns and two rifles referred to in the list submitted by Assistant Attorney General Kalinski.

At this time the police and investigating authorities had no knowledge of the exact calibre or type of weapon that they were looking for, it being generally the theory of the police at that time that the weapon might very well be a small handgun or revolver. The police had previously been informed by Edward Coolidge, Jr. that he possessed at least three firearms, which they had not asked to examine previously. McBain and Glennon, with the full consent of Mrs. Coolidge, took the four guns, together with certain items of clothing, from the house, which are contained in the list, and for which they gave a receipt which contains a list of all of the things taken from the house at that time.

When they left the house they told Mrs. Coolidge, and she did not at least object, that they proposed to look in the two automobiles which were out front. She gave them the keys for this purpose. They took certain items which are contained in the list and constituted items not set forth on the receipt given to Mrs. Coolidge, and the Court finds that Mrs. Coolidge knew that some items were being taken but did not know specifically what items were being taken, and did not specifically agree to those items being taken. She was not given a list of these items nor a receipt for them.

At the request of the defendant the Court would find that Mrs. Coolidge, Jr. had no knowledge of any constitutional rights, either by explanation of the police or otherwise, to deny the police the right to examine these, but finds that at that point Mrs. Coolidge fully intended to cooperate with the police in every way and to furnish

them freely with both information and guns in order, as she stated, to clear her husband of any suspicion.

Immediately after the police arrived, Mrs. Coolidge, Sr. left, at the request of the police, and Mrs. Coolidge was almost immediately informed by the police that her husband was in trouble because of the larceny and that it was doubtful if he would return that night.

The Court specifically finds that there was no search by the police of the premises at this time by either Sergeant McBain or by Inspector Glennon, and that it could only be ruled either a voluntary surrender of the items taken, both inside and outside, by Mrs. Coolidge, or a waiver of a right to resist seizure of the items in the house.

The Court finds that Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that assuming her condition is not greatly dissimilar today than what it was then, she would not have the resistance that a normal person of her age would have.

The Court does find that there was a search of the two automobiles and a taking of items, and there is a question as to whether or not it was done with the proper consent or a waiver of constitutional rights.

By use of the word "seizure", the Court makes no legal conclusion in these findings at this point.

The Court further finds that as part of the facts surrounding the taking of the items from the house, Mrs. Coolidge, Jr., at some point prior to the taking by the police, asked them if they wanted the guns, and one of the policemen said "No", and the other said "Yes".

The Court finds that the principal purpose of the police visit to the house was in connection with the Mason murder.

The Court finds that the officers were served with coffee by Mrs. Coolidge and that they left the house at approximately eleven-fifteen p.m.

The remainder of the motion relates to the validity of four search warrants, all issued on February 19th, 1964, all at approximately the same time, and all approximately at the same time that the warrant for the arrest was issued for the murder of Pamela Mason.

These warrants, which have been marked as exhibits, were for search of the premises owned by Mr. Coolidge, Jr., at 312 Seames Drive, a laundermat at 712 Valley Street, and the two automobiles—one a Pontiac and the other a Chevrolet. The search warrants all enumerated the same items to be looked for in each place, and the returns show various things collected from each place. The Court finds that the search warrants were issued by the Attorney General, acting as a Justice of the Peace, and it is agreed that the Attorney General was in charge of the investigation of the Mason case.

It is further found that the complaints for the search warrants were drafted by the Attorney General's office, and Chief McGranahan, who signed all of them as complainant, made oath before William Maynard, a Justice of the Peace. No evidence was offered by either the State or the defendant at this time as to what, if any, evidence was offered in addition to the complaints, prior to the issuance of the warrants.

The Court finds that the laundermat was searched during the forenoon of February 20th, the house was searched after two p.m. on February 20th, the Pontiac on Friday, February 21st, and the Chevrolet also on February 21st. The Mason warrants were served at eight p.m., on February 19, 1964, to arrest Coolidge on a charge of murder. Then both he and his wife were required to leave the premises, by the police. The locks on the house were changed by the police the following day.

The Court would find that the police purpose in removing Mrs. Coolidge, Jr. from the house that night at least was solely for her own protection from news media.

The Court finds that all during the period covered by the testimony on this motion, Mr. and Mrs. Coolidge were living in the home as husband and wife, with their child, and that she, as his wife, was entitled to occupy the premises.

The Court finds that on January 28th of 1964, two police officers, Doyon and LeClair, were questioning Mr. Coolidge with Mrs. Coolidge in the house, and that he showed them some guns at that time, which Mrs. Coolidge saw being shown to them. The police at that time did

not take the guns or request the guns, and the officers who called on the night of February 2nd had no knowledge of this previous visit at that time.

The Court finds as a matter of fact that there was never any request by the police of Edward Coolidge, Jr., on February 2nd, to search or to take any items from his house or cars.

The Court finds as a fact that during the latter part of January and the early part of February the police were questioning many people and from time to time had taken various weapons, with the consent of the people, to be examined, in the vicinity of Manchester.

I will have these findings transcribed and they will be sent to counsel; and I would like to have any briefs by the end of next week.

ROBERT F. GRIFFITH
Presiding Justice

September 1, 1964.

DEFENDANT'S REQUEST FOR FINDINGS OF FACT

NOW COME J. MURRAY DEVINE, MATTHIAS J. REYNOLDS AND JOHN A. GRAF, counsel for Edward H. Coolidge, Jr. and request that the Court make the following findings of fact by amending the Tentative Findings in the manner set forth herein.

1. On Page 4 Line 28, the sentence be amended to read as follows: "He was not formally charged with the theft of the three hundred dollars until two-thirty a.m. in the morning of February 3, 1964; . . ."

2. On Page 5 Line 6, the sentence be amended to read as follows: ". . . except that she alleges and he agrees that he urged her to tell the truth or she might go to prison as an accessory if she didn't."

3. On Page 5 Line 8, the sentence be amended to read as follows: "She returned to her home in the 1963 Chevrolet, a motor vehicle owned by her husband, Edward H. Coolidge, Jr."

4. On Page 5 Line 30, the sentence be amended to read as follows: "McBain and Glennon took the four guns and certain items of clothing from the house, which items are set forth on the receipt marked Defendant's Exhibit #H. These items are also contained in the Kalinski list marked Defendant's Exhibit #G. The Court specifically finds that there was no search by the police of the premises at 312 Seames Drive at this time by either Sergeant McBain or by Inspector Glennon. The items taken by the police, Defendant's Exhibit #H, were either voluntarily surrendered to the police by Mrs. Coolidge or Mrs. Coolidge did not resist the taking of these items."

5. On Page 5 Line 35, the sentence be amended to read as follows: "When they left the house at 11:15 P.M., they told Mrs. Coolidge, and she did not at least object, that they proposed to look in the two automobiles which were parked in the driveway. Mrs. Coolidge gave them the keys to the cars for this purpose. From 11:15 P.M. to 11:30 P.M., Sergeant McBain and Inspector Glennon conducted a search of the two automobiles. Mrs. Coolidge remained in the house during this period of time."

6. On Page 5 Line 38, the sentence be amended to read as follows: "During this period of time, they took certain items from the motor vehicles. A box of .22 calibre long rifle bullets, a pair of trousers, and a paring knife were taken from the 1951 Pontiac and possibly a coat hanger was taken from the 1963 Chevrolet. A single glove was also taken from one of the automobiles. The Court finds that at no time on February 2, 1964 did the police ask the permission of Mrs. Coolidge to take any of these items, that at no time on February 2, 1964 did Mrs. Coolidge actually know that any items were being taken, and that at no time did Mrs. Coolidge agree that these items could be taken. She was not given a list of these items nor a receipt for them."

7. On Page 7 Line 23, the sentence be amended to read as follows: "The Court finds that all during the period covered by the testimony on this motion, Mr. and Mrs. Coolidge, Jr. were living in the premises at 312 Seames Drive as husband and wife with their daughter and that Mr. Coolidge was the sole owner of said premises."

8. On Page 7 Line 34, the sentence be amended to read as follows: "The Court finds as a matter of fact that at no time on February 2 did the police request permission of Edward H. Coolidge, Jr. to search or to take items from his house or cars and that at no time on February 2 or 3 did the police inform Edward H. Coolidge, Jr. of the fact that they had searched and taken items from his house or cars. The Court further finds that Mrs. Coolidge received no permission from Edward H. Coolidge, Jr. to surrender any items of property to the police."

STATE'S REQUEST FOR FINDINGS OF FACT

NOW COMES William Maynard, Alexander Kalinski, and Emile R. Bussiere, Counsel for the State of New Hampshire in the above entitled cases and request that the Court make the following findings of fact by amending the "Tentative Findings" as follows:

1. Page 5, Line 44. The State requests that the Court reconsider its finding that Mrs. Coolidge, Jr. had no knowledge of any Constitutional Rights. It is conceded that a finding that she was not given any explanation by the Police of any Constitutional Rights would be warranted but that there is no evidence to support any finding by the Court that she had no knowledge of any Constitutional Rights whatsoever.

2. Page 6, Lines 13, 14 and 15 by striking out everything on line 1 after the words "Inspector Glennon," and everything on lines 14 and 15 and substituting in place thereof the following:

"The Court finds that the defendant's wife freely offered the firearms to the Police and made a voluntary delivery of said firearms without receiving any demand therefor."

"The remaining items received from the house were freely delivered to the Police by the defendant's wife."

In this connection the change in the Court's tentative findings is requested in that the State objects to the word "surrender" used on Line 14 of Page 6 because this word may imply a compliance with a demand. In fact the evidence clearly indicates that the firearms were delivered by the defendant's wife after she had offered them to the Police, one officer declining and the second officer accepting the offer. Certain portions of the evidence as quoted on Exhibit A attached hereto clearly support the State's position in this respect. This part of the tentative findings of the Court should clearly differentiate between the items "inside and outside" in that the applicable law may vary in each case. The State further suggests that the alternative stated on Line 15 of Page 6 is not applicable to the items obtained in the house.

3. The State requests that the Court reconsider its tentative finding contained on Page 6, Lines 18, 19 and 20. The Court will recall that the evidence as to the composure of the defendant's wife on February 2, 1964 was conflicting. It is submitted that it is only natural for the defendant's wife to be extremely nervous at this stage of the proceeding after her husband has been charged with such an offense. However, such condition is not necessarily indicative of her composure sixteen days before her husband's arrest for this crime.

4. The Court is requested to make the following additional finding of fact:

"The officers that called at the Coolidge residence on February 2, 1964 were dressed in plain clothes and acted reasonably in every manner in the pursuit of what must be considered as a very general investigation."

DEFENDANT'S REQUESTS FOR RULINGS OF LAW

NOW COME J. Murray Devine, Matthias J. Reynolds, and John A. Graf, counsel for Edward H. Coolidge, Jr., and request that the Court make the following rulings of law:

1. The search warrants are invalid and were illegally issued because the Attorney-General was not and could not be a "neutral and detached magistrate", as is required by Fourth Amendment standards.

2. The complaints in the search warrants failed to contain sufficient facts to enable a magistrate to find probable cause.

3. Because the search warrants were illegally issued, all items taken must be returned and all evidence derived from them rendered inadmissible.

4. That on February 2, there was a search by the police without a warrant of, at least, part of the defendant's home.

5. That on February 2, there was a seizure by the police without a warrant of items owned by the defendant in his home.

6. On February 2, there was a search by the police of defendant's automobiles.

7. On February 2, there was a seizure by the police of certain items from the defendant's automobiles.

8. The Court rules that the State presented no evidence to show that the taking of any items on February 2, from the defendant's home or vehicles, was incident to an arrest.

9. The Court rules that the State presented no evidence to show any exceptional circumstances that would justify the taking of any items from the defendant's home or vehicles on February 2, without a warrant.

10. There was no express authority given by the defendant to the police, or to his wife, to take items from his home and vehicles on February 2, without a warrant.

11. The defendant's wife had no implied authority to hand over to the police, or permit the police to take items from his home and vehicles on February 2, when they had the time and opportunity to ask the permission of the defendant, and failed to do so.

12. The defendant's wife, solely by virtue of her status as his wife, had no implied authority to hand over to the police property belonging to the defendant, on February 2.

13. The police obtained items from defendant's home and vehicles on February 2, without warrants, and as a result of actual coercion on defendant's wife.

14. The police obtained items from defendant's home and vehicles on February 2, without warrants, and as a result of implied coercion on defendant's wife.

15. The items taken by the police from the defendant's home on February 2, were taken in violation of the defendant's Constitutional rights, and therefore must be returned and all evidence derived from them rendered inadmissible.

16. The items taken by the police from the defendant's automobiles on February 2, were taken in violation of the defendant's Constitutional rights, and must be returned and all evidence derived from them rendered inadmissible.

MOTION FOR FURTHER HEARING UPON DEFENDANT'S
PETITION TO QUASH—Filed Sept. 18, 1964

The State of New Hampshire respectfully moves that a further brief hearing be held in connection with the defendant's Petition to Quash for the purpose of introducing certain evidence not developed at the previous hearing.

At such hearing, if this motion is granted by the Court, the State would offer to prove the following facts:

1. That the defendant Coolidge saw his firearms at the Manchester Police Station on the evening of Sunday, February 2, 1964, after they had been brought to the Station by Det. Sgt. McBain and Inspector Glennon.
2. That the defendant Coolidge was free on bail on the larceny charge from February 3, 1964, until February 19, 1964, when he was arrested upon the murder complaint.
3. That the defendant Coolidge offered to sell to Inspector Glennon one of his firearms which were obtained by the police on Sunday, February 2, 1964.

4. That although the defendant Coolidge was represented by counsel from February 3, 1964, to February 19, 1964, during that time Coolidge made no request nor demand for the return of his firearms and the other items obtained by the police from his home on Sunday, February 2, 1964.
5. That Det. Sgt. Paul Doyon and Officer Maurice Leclerc made a search of the defendant Coolidge's two automobiles on Tuesday, January 28, 1964, with the permission of the defendant Coolidge.

Dated this 18th day of September, 1964.

(Order of Court on motion: "Oct. 6, 1964 Motion granted. Exception noted. Robert F. Griffith, Presiding Justice.")

FINDING OF THE COURT ON DEFENDANT'S
PETITION TO QUASH

The Court had previously granted a motion filed by the State for further hearing upon Defendant's Petition to Quash, and testimony has been taken this morning in furtherance of this motion. This motion contained an offer to prove five specific statements of fact.

The Court finds that the evidence presented this morning, as stipulated to, proves these facts, but further finds that it would not affect any previous finding of fact by the Court.

Officer Leclerc who made the search on January 28th of the automobile testified that he did not consider he had any blanket permission to examine the cars at any other time.

ROBERT F. GRIFFITH
Presiding Justice

October 13, 1964

RULINGS OF THE COURT ON STATE'S REQUESTS
FOR FINDINGS OF FACT

The Court denies the State's request No. 1 in paragraph 1 of their requests for findings of fact.

The Court in ruling on request No. 2 in paragraph 2 of the State's requests finds as follows: To strike out in its previous finding all of the language on lines 13, 14 and 15 on page 6 following the words "Inspector Glennon" and substitute a period for the comma following the words "Inspector Glennon".

In ruling on the State's request in paragraph 3, the Court amends its findings of fact on page 6 beginning with the *third* new paragraph on page 6, line 17, by striking out that paragraph and substituting therefor the following: "The Court finds that Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that, assuming her condition is not greatly dissimilar today than what it was then, she would have been more nervous than a normal person of her age would have been."

The Court makes the following additional finding of fact in ruling upon the State's request No. 4: "The officers that called at the Coolidge residence on February 2, 1964, were dressed in plain clothes and acted courteously in every manner in the pursuit of what must be considered as a very general investigation of the Mason murder.

ROBERT F. GRIFFITH
Presiding Justice

October 13, 1964

RULINGS OF THE COURT ON DEFENDANT'S REQUESTS FOR FINDINGS OF FACT

The Court grants the Defendant's request to amend the Court's preliminary findings of fact No. 1, which adds the date of February 3, 1964 to the previous finding of the time with which the defendant was formerly charged with the theft of three hundred dollars.

The Court denies the request to change finding No. 2.

The Court grants defendant's request No. 3 to amend the previous finding as follows: On page 5, line 8, the sentence is amended to read as follows: "She returned to her home in a 1963 Chevrolet, a motor vehicle owned by her husband, Edward H. Coolidge, Jr."

The Court finds that on Request No. 4 of the defendant it has previously ruled on this request to some extent in the rulings on the State's Requests for Findings, but in order to specifically refer to exhibits spoken of here the Court amends its finding as follows: On page 5, line 30, "McBain and Glennon, with the consent of Mrs. Coolidge, took the four guns and certain items of clothing from the house, which items are set forth on the receipt marked "Defendant's Exhibit H". These items are also contained in the Kalinski list marked "Defendant's Exhibit G". In all other respects the findings made on the State's requests are to remain the same.

The Court grants request No. 5 and amends its findings as follows: On page 5, line 35, the sentence is amended to read as follows: "When they left the house at 11:15 P.M. they told Mrs. Coolidge and she did not, at least, object, that they proposed to look in the two automobiles which were parked in the driveway. Mrs. Coolidge gave them the keys to the cars for this purpose. From approximately 11:15 P.M. to 11:30 P.M. Sergeant McBain and Inspector Glennon conducted a search of the two automobiles. Mrs. Coolidge remained in the house during this period of time."

In Request No. 6, the Court amends its findings as they relate to the remainder of the paragraph previously referred to, beginning on page 5, line 38, to read as follows: "During this period of time they took certain items

from the motor vehicles. A box of twenty-two caliber long rifle bullets, a pair of trousers and a paring knife were taken from the 1951 Pontiac. A single glove was also taken from one of the automobiles."

The Court finds that on February 2, 1964, Mrs. Coolidge knew that some items were being taken but did not know specifically what items were being taken, and did not specifically agree to those items being taken. She was not given a list of these items nor a receipt for them.

The Court adds to its previous findings at the end of the first sentence that ends on line 4, "Mr. Coolidge was the sole owner of said premises subject to his wife's right of dower."

On Request No. 8 the Court adds the following finding to its previous findings: "The Court finds that at no time on February 2d did the police request permission of Edward H. Coolidge, Jr. to search or take items from his house or cars, and that at no time on February 2d or 3d did the police inform Edward H. Coolidge, Jr. that they had taken items from his house or cars. The Court finds, however, that Edward H. Coolidge, Jr., at about 2:30 A.M. on February 3d saw the guns and clothing at the Police Station at the time he was being charged with the theft of the three hundred dollars.

The Court finds that Mrs. Coolidge received no specific permission from Edward H. Coolidge, Jr. to give or surrender any items of property to the Police.

ROBERT F. GRIFFITH
Presiding Justice

October 13, 1964

COMPOSITE OF FINDINGS BY THE COURT ON DEFENDANT'S
PETITION TO QUASH SEARCH WARRANTS, TO RELEASE
ITEMS OF PROPERTY SEIZED, ET CETERA SUBMITTED BY
THE DEFENDANT

GRIFFITH, J.

After hearing on petition filed July 22, 1964, the Court finds that this hearing on the motion falls into two general categories of items searched and/or seized. First are a group of items which are contained either on the present list furnished by Assistant Attorney General Kalinski or which will be contained in an amended list to be filed of certain items claimed to have been seized without a search warrant. The circumstances surrounding the acquisition by the police of the items referred to are as follows:

On February 2nd, around one p.m. in the afternoon, Edward Coolidge, Jr. at the request of the police and as a result of a prior interview with Sgt. Doyon and Officer LeClair, went to the police station for the ostensible purpose of taking a lie detector test. His appearance at the police station at one o'clock on Sunday, February 2nd was as a result immediately of a telephone call received by him at his home from Officer LeClair at eight a.m. in the morning. Some time shortly before four o'clock in the afternoon, Coolidge went to Concord in company with Officer LeClair and Inspector Glennon, to the State Police Barracks, where he took a lie detector test given him by Sergeant McBain of the State Police. He returned following this test, in an automobile, to Manchester, reaching Manchester at about seven o'clock in the evening, with the same officers.

The Court finds that his presence both at the police station and in the car to and from Concord was, at least up to this point, voluntary. In the course of his lie detector test, the police testified that he admitted the theft of some three hundred dollars from his employer, Cote Brothers, and there was some conversation with Inspector Glennon on the way back to Manchester as to whether or not he would be charged with this theft. He was not

formally charged with the theft of the three hundred dollars until two-thirty a.m. in the morning of February 3, 1964; and the Court finds that he never at any time requested an opportunity to leave the station prior to being charged, but that had he requested it he probably would have been detained either with a formal charge or without a formal charge being made.

Mrs. Joanne Coolidge, wife of Edward Coolidge, Jr., who had been informed of the requested presence of Edward Coolidge, Jr. at the police station, was called for by the police herself some time about two-thirty, by two policemen who took her in a police car to the station, where she had a short conversation with her husband and a conversation with Captain Stipps of the police force, which is not particularly relevant to this case, except that she alleges and he agrees that he urged her to tell the truth or she might be in trouble if she didn't. She returned to her home in a 1963 Chevrolet, a motor vehicle owned by her husband, Edward H. Coolidge, Jr. Mr. Coolidge was the sole owner of said premises subject to his wife's right of dower.

Mrs. Coolidge, Sr., mother of Edward Coolidge, Jr. had been called to the Coolidge home when Mrs. Coolidge, Jr. went to the police station at about two-thirty, for the purpose of babysitting, and was at the house at ten-thirty p.m. when Sergeant McBain and Inspector Glennon called at the home, dressed in plain clothes. They went to the house generally for the purpose of questioning Mrs. Coolidge, Jr. about the theft from Cote Brothers, and further particulars about the Mason murder, on which both Sergeant McBain and Inspector Glennon were generally assigned. In the course of their questioning they inquired if Mr. Coolidge, Jr. had any firearms. They were informed by Mrs. Coolidge that he had, and she went, in company with them, into the bedroom, to a closet where there were four guns—two shotguns and two rifles referred to in the list submitted by Assistant Attorney General Kalinski.

At this time the police and investigating authorities had no knowledge of the exact calibre or type of weapon that they were looking for, it being generally the theory

of the police at that time that the weapon might very well be a small handgun or revolver. The police had previously been informed by Edward Coolidge, Jr. that he possessed at least three firearms, which they had not asked to examine previously. McBain and Glennon, with the consent of Mrs. Coolidge, took the four guns and certain items of clothing from the house, which items are set forth on the receipt marked "Defendant's Exhibit H". These items are also contained in the Kalinski list marked "Defendant's Exhibit G".

When they left the house at 11:15 P.M. they told Mrs. Coolidge and she did not, at least, object, that they proposed to look in the two automobiles which were parked in the driveway. Mrs. Coolidge gave them the keys to the cars for this purpose. From approximately 11:15 P.M. to 11:30 P.M. Sergeant McBain and Inspector Glennon conducted a search of the two automobiles. Mrs. Coolidge remained in the house during this period of time. During this period of time they took certain items from the motor vehicles. A box of twenty-two caliber long rifle bullets, a pair of trousers and a paring knife were taken from the 1951 Pontiac. A single glove was also taken from one of the automobiles.

The Court finds that on February 2, 1964, Mrs. Coolidge knew that some items were being taken but did not know specifically what items were being taken, and did not specifically agree to those items being taken. She was not given a list of these items nor a receipt for them.

At the request of the defendant the Court would find that Mrs. Coolidge, Jr. had no knowledge of any constitutional rights, either by explanation of the police or otherwise, to deny the police the right to examine these, but finds that at that point Mrs. Coolidge fully intended to cooperate with the police in every way and to furnish them freely with both information and guns in order, as she stated to clear her husband of any suspicion.

Immediately after the police arrived, Mrs. Coolidge, Sr. left, at the request of the police, and Mrs. Coolidge was almost immediately informed by the police that her husband was in trouble because of the larceny and that it was doubtful if he would return that night.

The Court specifically finds that there was no search by the police of the premises at this time by either Sergeant McBain or by Inspector Glennon.

The Court finds that Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that, assuming her condition is not greatly dissimilar today than what it was then, she would have been more nervous than a normal person of her age would have been.

The Court does find that there was a search of the two automobiles and a taking of items, and there is a question as to whether or not it was done with the proper consent or a waiver of constitutional rights.

By use of the word "seizure", the Court makes no legal conclusion in these findings at this point.

The Court further finds that as part of the facts surrounding the taking of the items from the house, Mrs. Coolidge, Jr., at some point prior to the taking by the police, asked them if they wanted the guns, and one of the policemen said "No", and the other said "Yes".

The officers that called at the Coolidge residence on February 2, 1964, were dressed in plain clothes and acted courteously in every manner in the pursuit of what must be considered as a very general investigation of the Mason murder.

The Court finds that the principal purpose of the police visit to the house was in connection with the Mason murder.

The Court finds that the officers were served with coffee by Mrs. Coolidge and that they left the house at approximately eleven-fifteen p.m.

The remainder of the motion relates to the validity of four search warrants, all issued on February 19th, 1964, all at approximately the same time, and all approximately at the same time that the warrant for the arrest was issued for the murder of Pamela Mason.

These warrants, which have been marked as exhibits, were for search of the premises owned by Mr. Coolidge, Jr., at 312 Seames Drive, a laundromat at 712 Valley Street, and the two automobiles—one a Pontiac and the other a Chevrolet. The search warrants all enumerated the same items to be looked for in each place, and the

returns show various things collected from each place. The Court finds that the search warrants were issued by the Attorney General, acting as a Justice of the Peace, and it is agreed that the Attorney General was in charge of the investigation of the Mason case.

It is further found that the complaints for the search warrants were drafted by the Attorney General's office, and Chief McGranahan, who signed all of them as complainant, made oath before William Maynard, a Justice of the Peace. No evidence was offered by either the State or the defendant at this time as to what, if any, evidence was offered in addition to the complaints, prior to the issuance of the warrants.

The Court finds that the laundermat was searched during the forenoon of February 20th, the house was searched after two p.m. on February 20th, the Pontiac on Friday, February 21st, and the Chevrolet also on February 21st. The Mason warrants were served at eight p.m., on February 19, 1964, to arrest Coolidge on a charge of murder. Then both he and his wife were required to leave the premises, by the police. The locks on the house were changed by the police the following day.

The Court would find that the police's purpose in removing Mrs. Coolidge, Jr. from the house that night at least was solely for her own protection from news media.

The Court finds that all during the period covered by the testimony on this motion, Mr. and Mrs. Coolidge were living in the home as husband and wife, with their child, and that she, as his wife, was entitled to occupy the premises.

The Court finds that on January 28th of 1964, two police officers, Doyon and LeClair, were questioning Mr. Coolidge with Mrs. Coolidge in the house, and that he showed them some guns at that time, which Mrs. Coolidge saw being shown to them. The police at that time did not take the guns or request the guns, and the officers who called on the night of February 2nd had no knowledge of this previous visit at that time.

The Court finds that at no time on February 2nd did the police request permission of Edward H. Coolidge, Jr. to search or take items from his house or cars, and that

at no time on February 2nd or 3rd did the police inform Edward H. Coolidge, Jr. that they had taken items from his house or cars. The Court finds, however, that Edward H. Coolidge, Jr. at about 2:30 A.M. on February 3rd saw the guns and clothing at the Police Station at the time he was being charged with the theft of the three hundred dollars.

The Court finds that Mrs. Coolidge received no specific permission from Edward H. Coolidge, Jr. to give or surrender any items of property to the Police.

The Court finds as a fact that during the latter part of January and the early part of February the police were questioning many people and from time to time had taken various weapons, with the consent of the people, to be examined, in the vicinity of Manchester.

DEFENDANT'S EXCEPTION'S—Filed November 5, 1964

In the above action, may the record reflect that the defendant excepts to the Court's denial in whole or in part of the following Requests for Findings of Fact; Request #2, Request #4 and Request #8. The defendant also excepts to the partial granting of State's Request #4.

Although I believe the record is clear, the Defendant also excepts to the Court's granting of the State's Motion for Further Hearing dated September 18th. The Defendant further excepts to the following factual findings of the Court:

- (1) That Joanne Coolidge had any knowledge that items were being taken from the motor vehicle.
- (2) That no search was conducted from the Coolidge premises on February 2, 1964.
- (3) That the Defendant, Edward H. Coolidge, Jr., saw any weapons at the Police Station on February 3,

1964.

FURTHER EXCEPTIONS BY DEFENDANT—
Filed Nov. 6, 1964

The defendant further excepts to any finding of fact that the defendant Coolidge was represented by counsel on Sunday, February 2, 1964, or Monday, February 3, 1964. No evidence was produced at the hearing held October 13, 1964, that would justify any such factual conclusion and any such allegation in paragraph 4 of the State's Motion for Further Hearing was not substantiated by factual testimony. For the purpose of clarifying the record, the defendant intends to submit a true copy of the appearance card filed by the office of Broderick, Craig & Bourque on behalf of the defendant Coolidge.

DEFENDANT'S EXCEPTIONS—Filed Nov. 10, 1964

May the record show that the defendant excepts to the failure of the Court to make rulings of law relative to the defendant's Petition to Quash and Suppress dated July 22, 1964.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.

SEPTEMBER TERM, 1964

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

RESERVED CASE

This is a motion by the Defendant, calling for a return to him of all his items taken by the police with warrants as well as without warrants, coupled with a prayer that all evidence derived from these items be rendered inad-

missible. Subsequent to the hearings the Court made Findings of Fact, but did not rule on the motion or make rulings of law.

During the course of the hearings, the State excepted to certain rulings of the Court admitting and excluding evidence, which exceptions appear more particularly in the transcript.

Also, during the course of the hearings, the defendant excepted to certain rulings of the Court admitting and excluding evidence, and allowing the State to re-open the hearings for further evidence, which exceptions appear more particularly in the transcript.

These and other exceptions appear more particularly in the transcript and in the appendix.

All questions of law raised by the foregoing exceptions or any exceptions appearing in the transcript or appendix are reserved and transferred without ruling.

The indictments, the Motion of the defendant to Quash and Suppress evidence dated July 22, 1964, the Findings of the Court dated September 1, 1961, the defendant's Requests for Findings of Fact, the defendant's Requests for Rulings of Law, the State's Requests for Findings of Fact, the State's motion for Further Hearing dated September 18, 1964, and Court's Ruling thereon, the Rulings of the Court dated October 13, 1964, on the State's and the Defendant's Requests for Findings of Fact, the Defendant's exceptions to rulings, together with a list of the exhibits transferred are to be printed as an appendix. The entire oral proceedings are to be transcribed.

RESERVED AND TRANSFERRED

ROBERT F. GRIFFITH
Presiding Justice

OPINION MARCH 11, 1965—STATE V. COOLIDGE,
106 N.H. 186

Hillsborough,

No. 5316.

STATE

v.

EDWARD H. COOLIDGE, JR.

Argued January 8, 1965.

Decided March 11, 1965.

1. The provisions of the Fourth Amendment to the United States Constitution are enforceable against the states through the Due Process Clause of the Fourteenth Amendment and all evidence obtained by searches and seizures in violation thereof is inadmissible in a state court.

However, if the evidence is not obtained by search and seizure but is voluntarily handed to the police these constitutional guarantees are not involved.

2. In criminal law enforcement a search ordinarily implies a quest by an officer of the law—a prying into hidden places for that which is concealed; a seizure contemplates forcible dispossession of the owner.
3. Hence, where the police in the process of a general investigation of a murder were voluntarily shown firearms and certain articles of respondent's clothing at his residence by his wife without coercion and they were taken away by the officers with her consent it was held that the objects were not secured by search and seizure and not obtained in violation of the Constitution of this state or that of the United States and are admissible in evidence if found relevant and material at the trial.
4. The validity of a search and seizure is to be determined by reference to whether the particular search and seizure was reasonable or unreasonable and that determination is to be made on a case-to-case basis in the light of the surrounding circumstances.

5. The reasonableness of a search and seizure may not be determined solely by reference to general rules or to concepts of authority, agency or privity.
6. A search by the police, in the conduct of a general investigation of a murder, of certain motor vehicles of the respondent at his residence with the consent of his wife who had exclusive physical possession and control over them at the time was held not to be unreasonable or unlawful where there was no duress, coercion, stealth or fraud in the conduct of the officers in obtaining her consent which was freely and intelligently given, and her conduct in giving consent to search the vehicles to which she had the keys was the normal action of a wife, and the conduct of the officers in the search was not ruthless or highhanded, or unfair, unreasonable or oppressive.
7. In criminal law enforcement the standard for obtaining a search warrant under the Fourth Amendment to the United States Constitution is enforced against the states through the Fourteenth Amendment.
8. It is a constitutional requirement that search warrants be issued only upon probable cause supported by oath or affirmation.
9. Probable cause exists where the facts and circumstances within the officer's knowledge and of which he had reasonable trustworthy information are in themselves sufficient to warrant a man of reasonable caution in the belief that an offense has been or is being committed.
10. Search warrants issued by the Attorney General as justice of the peace on affirmation under oath by a chief of police that the respondent had committed murder and containing his sworn statement that he had probable cause to suspect that certain objects used in the commission of the crime were concealed at specified locations, together with other oral evidence presented to the justice of the peace when issuing the warrants, complied with the requirements of the statute (RSA 595:1) and were properly issued on probable cause.

11. At a preliminary hearing to suppress evidence obtained on search warrants the respondent as the moving party has the burden of proving that the evidence was illegally obtained.
12. Upon the offer of such evidence at the trial, on objection that the evidence was illegally obtained, the State has the burden of presenting evidence to the Trial Court of facts in existence when the warrants were issued which established to the magistrate the probable cause upon which their issuance was based.
13. Certain articles acquired under search warrants were held to be the type of property which could be sought and seized by search warrant under the statute (RSA ch. 595), and upon their offer in evidence the State will have the burden of proving that they were properly seized.
14. The finding of facts and transfer to the Supreme Court of questions of law arising at a preliminary hearing in the Superior Court on a motion to suppress evidence allegedly obtained by illegal search and seizure was proper and authorized by statute (RSA 419:17).

Motion by the defendant for the return of certain items of personal property obtained without a search warrant from his person, home and motor vehicles; and for the suppression of all evidence and information produced from, by or as a result thereof.

Defendant further moved that four search warrants issued on February 19, 1964, be quashed as illegally issued and unlawfully obtained; and for the suppression of any and all evidence and information produced by, from, or as a result of these warrants under which searches and seizures were made on February 20 and 21, 1964.

On February 19, 1964, the defendant was arrested at about 8:00 P.M. under a warrant charging him with the murder of Pamela Mason on January 13, 1964. The four search warrants above and the arrest warrant were all issued at approximately the same time on February 19, 1964.

After hearings, the Court (*Griffith, J.*) made certain findings of fact and transferred without ruling, subject to defendant's exception, all questions of law raised by his motion. Also transferred to this court were all exceptions taken by the State and by the defendant during the course of and subsequent to the hearings.

William Maynard, Attorney General, *Alexander J. Kalinski*, Assistant Attorney General, and *Emile R. Bussiere*, county attorney (*Mr. Kalinski* orally), for the State.

J. Murray Devine (now deceased), *Matthias J. Reynolds* and *John A. Graf* (*Messrs. Reynolds* and *Graf* orally), for the defendant.

LAMPRON, J. On January 13, 1964, Pamela Mason, a young girl residing in Manchester, disappeared from her home and eight days later, on January 21, 1964, her body was found. On January 28, 1964, Sergeant Doyon and Officer LeClair called at defendant's home, of which he was the sole owner, and where he lived with his wife, Joanne, aged twenty-seven, and their two-year-old daughter. In the presence of his wife, these police officers questioned him relative to "his whereabouts, his actions and activities on January 13th." The Trial Court found that Coolidge "showed them some guns at that time, which Mrs. Coolidge saw being shown to them. The police at that time did not take the guns or request the guns." Officer LeClair asked the defendant if he was willing to take a lie-detector test. Coolidge said "he was" and "he would prefer to take it on a Sunday."

February 2, 1964, the following Sunday, Officer LeClair telephoned the defendant about taking such a test. Coolidge came to the Manchester police station about one in the afternoon. About four, in the company of two police officers, he went to the State Police headquarters in Concord to take a lie-detector test. There was testimony that in the course of this test the defendant admitted the theft of some three hundred dollars from his employer; and that on the way back to Manchester,

where they arrived about seven, the defendant had some conversation with an officer as to whether he would be charged with the theft. He was not formally charged therewith until two-thirty the following morning, February 3, 1964. The Trial Court found that defendant's "presence both at the police station and in the car to and from Concord was, at least up to this point, voluntary." The Court further found that defendant "never at any time, requested an opportunity to leave the station prior to being charged, but that had he requested it he probably would have been detained either with a formal charge or without a formal charge being made."

The Court found that on February 2, 1964, before the trip to Concord for the test "Mrs. Joanne Coolidge . . . who had been informed of the requested presence of Edward . . . [her husband] at the police station, was called for . . . about two-thirty, by two policemen who took her in a police car to the station, where she had a short conversation with . . . Captain Stipps of the police force . . . [in which] she alleges and he agrees that he urged her to tell the truth or she might be in trouble if she didn't. She returned to her home in a 1963 Chevrolet, a motor vehicle owned by her husband."

At ten-thirty that same evening of February 2, 1964, Sergeant McBain, of the State Police, and Inspector Glennon, of the Manchester police, called at the Coolidge home. The Trial Court found that the officers "went to the house generally for the purpose of questioning Mrs. Coolidge . . . about the theft from Cote Brothers, and further particulars about the Mason murder, on which both . . . were generally assigned. . . . At this time the police and investigating authorities had no knowledge of the exact calibre or type of weapon that they were looking for, it being generally the theory of the police at that time that the weapon might very well be a small handgun or revolver." Sergeant McBain testified that he did not know of the prior visit to the Coolidge home by other officers on January 28, 1964.

McBain and Glennon, both dressed in plain clothes, identified themselves as police officers and Mrs. Coolidge "let them into the house." Defendant's mother, who was

babysitting there, left shortly thereafter at the request of the officers. The Trial Court found further that "Mrs. Coolidge was almost immediately informed by the police that her husband was in trouble because of the larceny and that it was doubtful if he would return that night." "In the course of their questioning they inquired if Mr. Coolidge . . . had any firearms. They were informed by Mrs. Coolidge that he had, and she went, in company with them, into the bedroom, to a closet where there were four guns—two shotguns and two rifles." "McBain and Glennon, with the consent of Mrs. Coolidge took the four guns and certain items of clothing from the house" and gave her a receipt for them.

"At the request of the defendant the Court would find that Mrs. Coolidge . . . had no knowledge of any constitutional rights, either by explanation of the police or otherwise, to deny the police the right to examine these, but finds that at that point Mrs. Coolidge fully intended to cooperate with the police in every way and to furnish them freely with both information and guns in order, as she stated, to clear her husband of any suspicion." The Court also found that the "officers that called at the Coolidge residence on February 2, 1964 . . . acted courteously in every manner."

Article 19th, Part I of the Constitution of New Hampshire provides that "Every subject hath a right to be secure from all unreasonable searches and seizures of his preson, his houses, his papers, and all this possessions." It also recites the "formalities" required for the issuance of search warrants.

The Fourth Amendment to the Constitution of the United States reads as follows: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The provisions of the Fourth Amendment are enforceable against the states through the Due Process Clause of the Fourteenth Amendment and all evidence obtained

by searches and seizures in violation thereof is inadmissible in a state court. *Mapp v. Ohio*, 367 U. S. 643, 655; *Ker v. California*, 374 U. S. 23, 30. However if the evidence in question is not obtained by search and seizure but is voluntarily handed to the police officers these constitutional guarantees are not involved. *State v. Nelson*, 105 N. H. 184, 191; *United States v. Pate*, 324 F. 2d 934, 935 (7th Cir. 1963); *State v. Morriss*, 243 S. C. 225, 234. As to the four guns and certain items of defendant's clothing which the officers took from the Coolidge residence on the night of February 2, 1964, the Trial Court specifically found "that there was no search by the police of the premises at this time by either Sergeant McBain or by Inspector Glennon." The Court further found that these officers took those objects "with the consent of Mrs. Coolidge." The Trial Court also found "as a fact that during the latter part of January and the early part of February the police were questioning many people and from time to time had taken various weapons, with the consent of the people, to be examined, in the vicinity of Manchester."

I. A search ordinarily implies, a quest by an officer of the law, a prying into hidden places for that which is concealed. A seizure contemplates forcible dispossession of the owner. *Weeks v. United States*, 232 U. S. 383, 397; *United States v. Pate*, 324 F. 2d 934, 935 (7th Cir. 1963); *People v. Woods*, 26 Ill. 2d 557; *State v. Baron*, 106 N. H. 149. The Trial Court properly found on the evidence that the principal purpose of the visit to defendant's residence by officers McBain and Glennon on the evening of February 2, 1964, "was in connection with the Mason Murder" and "in the pursuit of what must be considered as a very general investigation of the Mason Murder."

McBain and Glennon testified as follows: Dressed in plain clothes they knocked at the side door of the Coolidge house, identified themselves as police officers and were invited in by defendant's wife. They all sat in the living room. Out of courtesy, they told Mrs. Coolidge that it was very possible that her husband would be detained in the station that evening. They told her that as part

of their investigation of the Mason case guns owned by various other persons had been taken for tests. She stated they had four guns in the house. When she went to the bedroom closet to get the guns, they went with her. They "did not look into the closet, or feel around" and they did not look around any of the other areas of the house except where they were invited.

These officers further testified that Mrs. Coolidge said she had nothing to hide and had no objection to the officers taking these four guns along for tests. Also that she pointed out some of her husband's clothing and inquired if it might be something they were looking for and had no objection to their having them. They testified further that Mrs. Coolidge appeared to be very calm and very cooperative and that they had a cup of coffee with her.

Mrs. Coolidge testified that when she asked the officers if they wanted the guns one said "No" and the other said "We might as well take them" and she said "If you would like them, you may take them."

The evidence warranted the Trial Court's finding that "there was no search by the police of the premises"; and that "Mrs. Coolidge fully intended to cooperate with the police in every way and to furnish them freely with both information and guns in order, as she stated, to clear her husband of any suspicion."

On the facts and circumstances of this case it is our opinion that the four guns and certain objects of defendant's clothing obtained from his residence on the night of February 2, 1964, by officers McBain and Glennon were not secured by search and seizure. On the contrary they were voluntarily shown and given to them by Mrs. Coolidge without coercion on their part and were taken away by the officers with her consent. Consequently they were not obtained in violation of the Constitution of our state or that of the United States and are not subject to being returned to the defendant and are admissible in evidence if found relevant and material at the trial. *State v. Nelson*, 105 N. H. 184, 191; *United States v. Pate*, 324 F. 2d 934, 935 (7th Cir. 1963); *State v. Mor-*

ris, 243 S. C. 225, 234. See *Brown v. State*, 372 P. 2d 785 (Alaska 1962).

II. When the two officers left the Coolidge residence about 11:15 P.M. that night, the Trial Court found that "they told Mrs. Coolidge and she did not, at least, object, that they proposed to look in the two automobiles which were parked in the driveway. Mrs. Coolidge gave them the keys to the cars for this purpose. From approximately 11:15 P.M. to 11:30 P.M. Sergeant McBain and Inspector Glennon conducted a search of the two automobiles. Mrs. Coolidge remained in the house during this period of time. During this period of time they took certain items from the motor vehicles."

"The Court finds that on February 2, 1964, Mrs. Coolidge knew that some items were being taken but did not know specifically what items were being taken, and did not specifically agree to those items being taken. She was not given a list of these items nor a receipt for them."

The Trial Court made the further findings which like the previous are supported by the record: "The Court finds that at no time on February 2nd did the police request permission of Edward H. Coolidge, Jr. to search or take items from his house or cars, and that at no time on February 2nd or 3rd did the police inform Edward H. Coolidge, Jr. that they had taken items from his house or cars. The Court finds, however, that Edward H. Coolidge, Jr. at about 2:30 A.M. on February 3rd saw the guns and clothing at the police station at the time he was being charged with the theft of the three hundred dollars.

"The Court finds that Mrs. Coolidge received no specific permission from Edward H. Coolidge, Jr. to give or surrender any items of property to the Police.

"The Court finds that all during the period covered by the testimony on this motion, Mr. and Mrs. Coolidge were living in the home as husband and wife, with their child, and that she, as his wife, was entitled to occupy the premises." The Court also found that "Mr. Coolidge was the sole owner of said premises subject to his wife's right of dower.

"The Court finds that Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that, assuming her condition is not greatly dissimilar today than what it was then, she would have been more nervous than a normal person of her age.

"The officers that called at the Coolidge residence on February 2, 1964, were dressed in plain clothes and acted courteously in every manner in the pursuit of what must be considered as a very general investigation of the Mason murder."

As appears previously the Trial Court stated it would find on request that Mrs. Coolidge had no knowledge of any constitutional right to deny the police the right to examine any objects and found that "Mrs. Coolidge fully intended to cooperate with the police in every way."

Finally the Court found "that there was a search of the two automobiles and a taking of items, and there is a question as to whether or not it was done with the proper consent or a waiver of constitutional rights."

The law is clear that searches of automobiles must meet the test of reasonableness under the Fourth Amendment before evidence obtained thereby is admissible. *Pres-ton v. United States*, 376 U. S. 364, 366. The reasonableness of a search and seizure should not be solved solely by reference to general rules or to concepts of authority, agency or privity. *Stoner v. California*, 376 U. S. 483, 488. In the last analysis, the question of the validity of a given search and seizure must be determined by reference to whether that particular search and seizure was reasonable or unreasonable, and that determination must be made on a case-to-case basis in the light of the surrounding facts and circumstances. *United States v. Cook*, 213 F. Supp. 568, 571 (E. D. Tenn. 1962); *United States v. Roberts*, 223 F. Supp. 49, 59 (E. D. Ark. 1963); *Roberts v. United States*, 332 F. 2d 892, 895 (8th Cir. 1964); *Ker v. California*, 374 U. S. 23, 33.

There is a conflict in the decision as to whether in a particular case a husband can assert his constitutional rights to protection from unreasonable search and seizure to prevent the product of a search consented to by

his wife from being used in evidence against him. See *Stein v. United States*, 166 F. 2d 851 (9th Cir. 1948); *United States v. Rykowski*, 267 Fed. 866 (S. D. Ohio, 1920); *State v. Cairo*, 74 R. I. 377; *Dalton v. State*, 230 Ind. 626; *Bellam v. State*, 233 Md. 368; *Commonwealth v. Wright*, 411 Pa. 81; *People v. Palmer*, 31 Ill. 2d 58; Annot. 31 A.L.R. 2d 1091 as supplemented. There being no "fixed formula" for application in specific cases of the constitutional prohibition against unreasonable searches and seizures such conflicts are bound to arise as each case is decided on its own facts and circumstances. *Mapp v. Ohio*, 367 U. S. 643, 653; *Ker v. California*, *supra*, 32, 33. We proceed therefore to an examination in this case 1) of the conduct of the police officers; 2) the control of defendant's wife over these automobiles; 3) the nature of her consent and the manner in which it was obtained; 4) all other material facts and circumstances.

The two automobiles searched by the officers were a 1951 Pontiac two-door sedan and a 1963 Chevrolet convertible, both parked in the driveway of the residence owned by the defendant. Both cars were registered in his name as owner. Sergeant McBain testified that their inspection of these vehicles was "with the permission, and with the keys which were given to us by Mrs. Coolidge," defendant's wife. He testified further that he brought back the keys to Mrs. Coolidge who was in the kitchen and told her what articles they were taking. Inspector Glennon testified that they went out to the cars after asking the permission of defendant's wife to do so and that they took certain items found therein. Mrs. Coolidge testified that the officers asked if they could check the vehicles and "I went to the kitchen and got the keys to the car and gave them the keys, and they went out." She further testified that the officers were out there about fifteen minutes and "one came back with the keys, and then they left." She also testified that she had driven home that afternoon one of the cars which her husband had taken to go to the police station earlier.

Defendant and his wife were married January 15, 1961. At this time, they were living as husband and wife with their child in the home in the driveway of which the two cars searched by the officers were parked. Mrs. Coolidge had the keys to both of these automobiles and it could be found that she was licensed to operate them. The cars were within her view from the kitchen window of her home when the officers were inspecting them. It can be found and ruled on these facts that defendant's wife had equal right and control with her husband over these vehicles, and under the circumstances existing at 11:15 in the evening of February 2, 1964 when they were searched, that she had exclusive physical possession and control over them. *People v. Dominguez*, 144 Cal. App. 2d 63, 65; 47 Am. Jur., Searches and Seizures, s. 72, p. 548, and supp. s. 72, p. 76.

The defendant maintains that his wife's consent was not freely and intelligently given but was obtained by coercion and through misrepresentation. To support this position, he points to, among other facts, the Trial Court's finding that "Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that, assuming her condition is not greatly dissimilar today than what it was then, she would have been more nervous than a normal person of her age would have been."

The Trial Court also found, however, that the officers acted courteously in every manner and that "Mrs. Coolidge . . . did not, at least, object," when they proposed to look in the two automobiles. There was testimony from both officers that on this night of February 2, 1964, she was "very cooperative," "very calm" and "rational" and that they had coffee with her. They were dressed in plain clothes, identified themselves as police officers and were invited in by defendant's wife. They told her that her husband would not be home that night because "he was in serious trouble." Although denied by her, the officers testified that they told Mrs. Coolidge that in their investigation of the Mason case they took items "such as guns and so forth" for examination. The Trial Court found that the police had taken various weapons for examination with the consent of the many

people they were questioning. The evidence did not compel a finding, nor did the Trial Court find, that the officers told defendant's wife any falsehoods as was the case in *Commonwealth v. Wright*, 411 Pa. 81 and *United States v. Reckis*, 119 F. Supp. 687. There was no evidence that they pretended to act under the authority of a search warrant as in *Cofer v. United States*, 37 F. 2d 677 (5th Cir. 1930) and *United States v. Rykowski*, 267 Fed. 866 (S. D. Ohio, 1920), cited by the defendant.

The Trial Court properly found that "at that point Mrs. Coolidge fully intended to cooperate with the police in every way . . . to clear her husband of any suspicion." Unlike the situation in *Nelson v. United States*, 208 F. 2d 505 (D.C. Cir. 1953) and *Ray v. United States*, 84 F. 2d 654, 656 (5th Cir. 1936) it would be "in accordance with human experience" (*cf. Nelson v. United States, supra*, 513) for a wife in this frame of mind to freely and intelligently consent to the search of the automobiles and to the taking of items found. This would be especially true in this case where on January 28, 1964, less than a week previously, the defendant in the presence of his wife, in their home, produced guns for examination by two other police officers. On that occasion these officers requested permission from the defendant to look in his cars "and he came outside with us and assisted us in going through the cars, and we examined both cars and opened the trunks, and we opened the glove compartments."

We are of the opinion that the record supports the following conclusions: 1) There was no duress or coercion or stealth or fraud in the conduct of the officers in obtaining the consent of defendant's wife to the search of the two automobiles; 2) her consent was freely and intelligently given; 3) her conduct in giving permission to search these two automobiles parked in the driveway of their home and to which she had the keys was the normal action of a wife. *Holt v. State*, 17 Wis. 2d 468; 4) the conduct of the officers in the search was not ruthless or highhanded as in *Mapp v. Ohio*, 367 U. S. 643 (see *State v. Loudon*, 15 Utah 2d 64), or unfair, un-

reasonable or oppressive. *United States v. Roberts*, 223 F. Supp. 49, 59, *aff'd* 332 F. 2d 892 (8th Cir. 1964).

We hold therefore that under all the facts and circumstances of this case (*Ker v. California*, 374 U. S. 23, 33) the search of these two automobiles was not unreasonable or unlawful. *Stein v. United States*, 166 F. 2d 851 (9th Cir. 1948); *Roberts v. United States*, 332 F. 2d 892 (8th Cir. 1964); *People v. Perroni*, 14 Ill. 2d 581 (*cert. denied* 359 U. S. 980); *People v. Hughes*, 183 Cal. App. 2d 107; *Bellam v. State*, 233 Md. 368; *State v. Shephard*, 124 N. W. 2d 712 (Iowa 1963); *People v. Palmer*, 31 Ill. 2d 58.

III. The defendant also moved to suppress as evidence certain items seized pursuant to four search warrants issued February 19, 1964, on the ground that these warrants were illegally issued and the items unlawfully obtained in deprivation of his constitutional rights.

The Trial Court found that all four search warrants were "issued on February 19, 1964, all at approximately the same time, and all approximately at the same time that the warrant for the arrest was issued for the murder of Pamela Mason."

"These warrants . . . were for search of the premises owned by Mr. Coolidge, Jr., at 312 Seames Drive, a laundermat at 712 Valley Street, and the two automobiles—one a Pontiac and the other a Chevrolet. The search warrants all enumerated the same items to be looked for in each place, and the returns show various things collected from each place. The Court finds that the search warrants were issued by the Attorney General, acting as a justice of the peace, and it is agreed that the Attorney General was in charge of the investigation of the Mason case.

"It is further found that the complaints for the search warrants were drafted by the Attorney General's office, and Chief McGranahan, who signed all of them as complainant, made oath before William Maynard, a justice of the peace. No evidence was offered by either the State or the defendant at this time as to what, if any, evidence was offered in addition to the complaints, prior to the issuance of the warrants.

"The Court finds that the laundermat was searched during the forenoon of February 20th, the house was searched after two P.M. on February 20, 1964, the Pontiac on Friday, February 21st, and the Chevrolet also on February 21st. The Mason warrants were served at eight P.M., on February 19, 1964, to arrest Coolidge on a charge of murder."

The defendant maintains that these warrants are defective for want of a neutral and detached magistrate and because they contain no facts from which probable cause could be found.

The Fourth Amendment of the Federal Constitution provides that "No warrants shall issue, but upon probable cause, supported by oath or affirmation." Article 19th, Part I of the Constitution of New Hampshire provides that "all warrants to search suspected places, or arrest a person for examination or trial in prosecution for criminal matters are contrary to this right [to be secure from all unreasonable searches and seizures] if the cause or foundation of them be not previously supported by oath or affirmation."

The standard for obtaining a search warrant under the Fourth Amendment is enforced against the states through the Fourteenth Amendment. *Aguilar v. Texas*, 378 U. S. 108. To meet constitutional requirements the warrants in this case had to be issued upon probable cause supported by oath and affirmation. *Giordenello v. United States*, 357 U. S. 480, 485. Probable cause exists where the facts and circumstances within the officer's knowledge, and of which he had reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *Carroll v. United States*, 267 U. S. 132, 162; *Chin Kay v. United States*, 311 F. 2d 317, 320 (9th Cir. 1962). Rule 4 of the Federal Rules of Criminal Procedure provides that for the issuance of a federal warrant for arrest it must appear from the complaint "that there is probable cause to believe" that an offense has been committed by the defendant. Rule 41 regulating the issuance of federal search warrants provides in section (c) that a warrant

shall issue only on affidavit sworn to before the judge or commissioner and only if he "is satisfied that grounds for the application exist or that there is probable cause to believe that they exist."

However state laws relating to arrests and searches have not been obliterated in favor of federal law. *Ker v. California*, 374 U. S. 23, 31. The states are not precluded "from developing workable rules governing arrests, searches and seizures to meet 'the practical demands of effective criminal investigation and law enforcement' in the states provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures and the concomitant command that evidence so seized is inadmissible against one who has standing to complain." *Id.*, 34. Furthermore "the Fourth Amendment's commands, like all constitutional requirements, are practical and not abstract." "Affidavits for search warrants . . . must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion." "Courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner." *United States v. Ventresca*, 85 S. Ct. 741, 746.

RSA 595:1 provides that "A justice or municipal court may issue a warrant for searching any place therein described in the day time, upon complaint, under oath, that it is believed that a person liable to arrest for a crime is concealed there . . . or that any property or thing of any of the following kinds is concealed therein." The statute then enumerates certain types of property not applicable here and then provides "VI. The subject matter of any offense not herein specially mentioned."

Each of the four search warrants in issue was executed by the chief of police of Manchester under oath and addressed to William Maynard, a justice of the peace. Each contained a complaint charging that on the 13th day of January, 1964, the defendant committed an assault upon Pamela Mason with a deadly weapon, a gun, described therein, and also made an assault upon her with a deadly weapon, a knife, causing wounds described therein which resulted in her death. Each war-

rant listed certain objects and things used in the commission of that offense which the complainant had probable cause to believe were kept and concealed in four separate locations specifically and separately described in each warrant: premises at 312 Seames Drive; a 1951 Pontiac vehicle; a 1963 Chevrolet convertible; a laundromat at 712 Valley Street in Manchester.

Neither side offered testimony as to what evidence was presented to the justice before the warrants were issued. The defendant maintains that a proper determination of probable cause could not be made by a magistrate who is the Attorney General of the state, in whose office the complaints were drawn, who took the complainant's oath as justice of the peace, and who is required by virtue of his office to act as attorney for the State in a crime of this type. RSA 7:6; *Wyman v. Danais*, 101 N. H. 487.

We hold that on its face each of these warrants complied with the requirements of RSA 595:1 regulating the issuance of such search warrants in this state. The sworn complaint in each warrant was not based on mere suspicion or belief but rather on an affirmation under oath by the chief of police of Manchester that the defendant had committed the crime of murder. It also contained his sworn statement that he had probable cause to suspect that certain objects used in the commission of this crime were concealed at the named location. In addition thereto the Attorney General, who acted as justice, stated at the hearing on this motion to suppress that there was other oral evidence presented to him when issuing the warrants. In the absence of evidence to the contrary, it could be found thereon that probable cause existed to justify their issuance. *Chin Kay v. United States*, 311 F. 2d 317, 320 (9th Cir. 1962); *Conti v. Morgenthau*, 232 F. Supp. 1004 (S.D. N.Y. 1964); 47 Am. Jur., Seaches and Seizures, s. 22, p. 516.

Furthermore there is no evidence in the record requiring a finding that William Maynard, the Attorney General, could not perform, as a justice of the peace, the functions required of a "justice" by RSA 595:1. Nor is there any evidence in the record requiring a finding

that William Maynard, as justice, could not judge for himself the persuasiveness of the facts relied on to show probable cause or that he did not find probable cause from facts or circumstances presented to him under oath or affirmation by the chief of police. In the absence of such evidence it must be assumed that having issued the warrant the justice had sufficient basis to find probable cause in conformity with the constitutional requirements. *Anderson v. States*, 192 Wis. 352; *Aguilar v. Texas*, 378 U. S. 108.

Consequently on this preliminary motion to suppress, the defendant, as the moving party, had the burden of proving that the evidence was illegally obtained. *Murray v. United States*, 333 F. 2d 409, 411 (10th Cir. 1964); 20 Am. Jur., Evidence, s. 396, p. 357; 79 C.J.S., Searches and Seizures, s. 98, p. 917; 7 Vill. L. Rev. 407, 435. In such a hearing the State was not required to disclose its entire case to prove that probable cause to issue the warrants existed. *United States v. Pardo-Bolland*, 229 F. Supp. 473, 478 (S.D. N.Y. 1964); *State v. Laconia District Court*, 106 N. H. 48. If at the trial the State offers evidence secured under these warrants and it is challenged, then, as stated in its brief, the State will have the burden of presenting evidence to the Trial Justice of facts in existence when the warrants were issued which established to the magistrate the probable cause upon which their issuance was based. *Beck v. Ohio*, 379 U. S. 89; *United States v. Ventresca*, 85 S. Ct. 741.

IV. Lastly the defendant maintains that the items taken under these warrants were evidentiary in nature and not seizable. *Harris v. United States*, 331 U. S. 145. In the absence of statutory restriction it is usually held that any property may be seized which will furnish proof of the crime. 47 Am. Jur., Searches and Seizures, s. 54, p. 534; 4 Wharton's Criminal Procedure, s. 1569. Rule 41 of the Federal Rules of Criminal Procedure lists certain types of property which can be seized under a federal search warrant among which is property "designed or intended for use or which is or has been used as the means of committing a criminal offense." (b) (2).

However our statute (RSA ch. 595) is not as limited in this respect and provides for the seizure of specified kinds of property including: "VI. The subject matter of any offense not herein specially mentioned." RSA 595:1 VI. We hold that the items acquired under the search warrants were the type of property which could be sought and seized by search warrant under the laws of this state. See *State v. Chinn*, 231 Ore. 259, 276-279. If these items are offered in evidence the State, as previously stated, will have the burden of proving that they were described in the warrant or seizable thereunder. See *Johnson v. United States*, 293 F. 2d 539, 540 (D.C. Cir. 1961); *Palmer v. United States*, 203 F. 2d 66, 67 (D.C. Cir. 1953).

The test is always whether the search and seizure under the facts and circumstances of the case was unreasonable. *United States v. Pardo-Bolland*, *supra*; *United States v. Ventresca*, *supra*, 746. These search warrants were issued simultaneously with the issuance of a warrant to arrest the defendant on a charge of murder. When the searches were made the defendant had been arrested for murder. There is nothing in the record to indicate that the arrest or the search warrants were being used merely as pretexts for the purpose of conducting a general exploratory search with the sole aim of finding evidence to connect the defendant with some crime. *Leahy v. United States*, 272 F. 2d 487, 491 (9th Cir. 1959); *United States v. Guido*, 251 F. 2d 1 (7th Cir. 1958). There is no basis in the record to find that these searches were unreasonable or in violation of any constitutional provision.

The procedure followed by the Trial Justice on his motion to suppress of making findings of fact and transferring to this court all questions of law was proper and authorized under RSA 491:17.

Defendant's exceptions are overruled and the case is remanded to the Superior Court for disposition in accordance with this opinion.

Remanded.

All concurred.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

REHEARING ON S & S DENIED

In case of No. 5316, State v. Coolidge, the court upon
April 13, 1965, made the following order:

Motion for rehearing denied.

Concord,
April 13, 1965

By order of the Court:

GEORGE O. SHOVAN
Clerk

MOTION TO RETURN AND SUPPRESS EVIDENCE—
Filed May 13, 1965

NOW COMES counsel for the defendant and states as follows:

1) That without benefit of a search warrant or any other legal authority the State took the defendant's 1951 Pontiac to include various items of personal property therein at or about the time of his arrest, and have continued to hold same without any legal justification.

2) That without benefit of search warrants or other legal justification the State took a Chevrolet automobile belonging to the defendant, to include various items of personal property therein.

3) That the State has returned this vehicle.

WHEREFORE, counsel pray that all items in these vehicles as well as the 1951 Pontiac vehicle itself be returned to the defendant, and all evidence derived or taken therefrom be suppressed and excluded from introduction at the trial.

Order of Court on motion: "May 14, 1965 Motion denied. Subject to right of defendant to have motion acted upon later.

ROBERT F. GRIFFITH
Presiding Justice"

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS

APRIL TERM 1965

No. 3136

No. 3137

THE STATE OF NEW HAMPSHIRE

v

EDWARD H. COOLIDGE, JR.

The above-entitled action came on for trial before the Hon. Robert F. Griffith, Justice, Superior Court, and a jury, at Manchester, N.H. on Monday, May 17, 1965.

APPEARANCES:

FOR THE STATE:

WILLIAM MAYNARD, Esq., Attorney General

ALEXANDER J. KALINSKI, Esq., Asst. Attorney
General

EMILE R. BUSSIERE, Esq., County Attorney

PETER S. SMITH, Esq., Attorney General's Office

FOR THE DEFENDANT:

MATTHIAS J. REYNOLDS, Esq.

ROBERT L. CHIESA, Esq.

JOHN A. GRAF, Esq.

STENOGRAPHER:

T. J. McDONOUGH

[Vol. 1, p. 19]

MR. REYNOLDS: . . . We have a motion—motions, to supress certain evidence, but I understand these will be taken up with the Court as the evidence is introduced.

* * * *

[Vol. 1, p. 20]

THE COURT: All right. I'll deny them all, subject to your exception.

. . . .

DIRECT OF MAURICE LECLERC

[Vol. IV, p. 87, p. 88]

MR. BUSSIERE: Now, on February 2nd, would you tell the Court what contact, if any, you made with reference to the defendant in this case, Mr. Coolidge.

MR. LECLERC: The first contact on February 2nd was made at approximately eight A.M., when I called him at home.

Q And at that time, would you tell us what the conversation was? Briefly.

A I called him at home over the phone and identified myself, and he stated, "Is this pertaining to taking the examination?" and I said, "That's right." And I asked him if he could meet me at the station around 1 A.M.—or 1 P.M.; and he said yes he would.

Q And did he meet you at that time?

A He did report to the station. I was out on the road, working on something else at the time he showed up at the station.

Q Until that time, had you—strike that question.

MR. BUSSIERE: As a result of him going to the station, did you then take him to Concord for a Polygraph examination?

MR. LECLERC: I did sir.

Q And who were you with at that time?

A Inspector Doyon.

Q And after the examination, did you—what did you do?

A We returned to the station sir.

Q And did you conduct any further interrogation at that time?

A Yes, we did sir.

Q Up until what time about?

A I'd say almost until three A.M.

[Vol. VI, p. 36, p. 37]

THE COURT: All right. You desired to have your objection and exception noted to the introduction of the items taken from the house. In order to maintain the objection made in your motion to suppress that evidence—which went to the Supreme Court in *State v. Coolidge* and which the Supreme Court, at that time, ruled were admissible—in order that your exception is noted to the admission to that and in order that it may not be considered any waiver of your rights, may I say further, that failure to object, or take an exception to the admission of any evidence that has been ruled upon by the Supreme Court will not be construed as a waiver, as far as this trial is concerned.

. . . .

[Vol. VI, p. 96]

MR. REYNOLDS: Objection, Your Honor. May I approach the bench?

THE COURT: Yes. I will assume that your objection is made and save your exception in accordance with the other matter that we've had evidence on, relating to February 2nd—that I have permitted to go in. Do you think you need anything more on the record?

MR. REYNOLDS: Not right here, Your Honor.

THE COURT: All right.

. . . .

[Vol. VI, p. 182-p. 227]

(Trial recessed at 10:40 A.M. and resumed at 10:56 A.M. without the jury present.)

FRANCIS P. McGRANAGHAN

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

THE CLERK: State your name and address.

THE WITNESS: Francis P. McGranaghan. I'm Chief of Police in the City of Manchester and I reside at 32 Mammoth Road.

THE COURT: Do you want to sit down Chief, and move that over in front of you. Now, this is a hearing on—a preliminary hearing on the admissibility of certain items that will be offered by the State—taken from the house of the defendant and from the Pontiac automobile of the defendant, under search warrants issued February 20th, 1964.

MR. REYNOLDS: Your Honor, for the record, is the State representing that other items taken from a Chevrolet and a laundromat by search warrants are not to be—are not in the case?

MR. BUSSIERE: May I, Your Honor?

THE COURT: Is that the State's position?

MR. BUSSIERE: Yes sir.

THE COURT: That's what I understood. Now, these warrants, including the one covering the Chevrolet and the laundromat—were—there was a previous hearing on a motion to suppress these items—by the defendant—which went to the Supreme Court. At that hearing the burden of proof was upon the defendant. In this hearing, the burden of proof is upon the State, as I understand the Supreme Court decision on that case. My understanding is—well, you may proceed with your evidence.

MR. BUSSIERE: Yes. Your Honor, may I just correct the fact that you mentioned the warrants were issued on February 20th, whereas I believe they were issued February 19th.

THE COURT: You're correct. February 19th in both cases. The warrant covering the Pontiac was returned February 21 and inventories vacuum cleanings from floor mats, seat cushions and things of that nature—piece of fiber from left front floor mat, with red satin. The one issued on the home returned February 20th and inventoried debris, specimen from cellar, one pair of gents leather work gloves, one light blue T-shirt, one khaki type army raincoat. May I assume in that one, the only thing is debris specimens from the cellar.

MR. BUSSIERE: No, Your Honor. I do not believe we're concerned with the debris from the cellar. I would like to support the State's right to introduce items from

the house—or I shouldn't say the house—I would like to support the State's right to issue—to introduce items taken under the search warrant authorizing a search of the premises at 312 Seams Drive.

THE COURT: Well, do I understand you propose to offer any of the items inventoried?

MR. BUSSIERE: Well, we propose to offer items that were seen, but not taken at the house.

THE COURT: Well, I'm pretty much in the dark as to what you're saying.

MR. BUSSIERE: Well, I think that the—if the Court wants a more specific offer, I will be glad to make it, but it seems to me . . .

THE COURT: Well, I think I would.

MR. REYNOLDS: Shall we make it at the bench?

THE COURT: No.

MR. BUSSIERE: Well, for one point, Your Honor, the State takes a double position with reference to the car that was taken on the night of February 19th. The State claims that the car is an instrumentality of crime and therefore it's seizable under the warrant issued to search the premises at 312 Seames Drive. That's one point.

THE COURT: I see.

MR. BUSSIERE: Secondly, the State also takes—claims the right to introduce into evidence certain magazines and books that were observed in the Defendant's residence on February 19th.

MR. REYNOLDS: Your Honor, I'm going to object to any thing further, because this hearing is limited to the items taken under the search warrant, and enumerated therein.

MR. BUSSIERE: May I add to this before I'm cut off? That the State would claim that right under the search warrants and claim that right also under the arrest warrant.

THE COURT: Well then, is it my understanding that the State claims that the inventory has no significance, or the returns of the search warrants have no significance?

MR. BUSSIÈRE: Are you speaking with reference to the one on the house or the one on the Pontiac?

THE COURT: Either.

MR. BUSSIÈRE: The one on the Pontiac has great significance.

THE COURT: You feel the one on the house has no significance?

MR. BUSSIÈRE: Unless the Court would permit an amendment to it, the answer is no. I think there is law to the effect that it could be amended.

THE COURT: Well, may I say that this case went to the Supreme Court.

MR. BUSSIÈRE: Yes sir.

THE COURT: And this proposition was never mentioned.

MR. BUSSIÈRE: We'll agree—in any prior hearing, until just today.

MR. REYNOLDS: It's the first I've heard of it.

THE COURT: It's the first I've heard of it.

MR. BUSSIÈRE: I think we'll stand on—may I confer with my Brothers a minute?

THE COURT: Yes.

(Conference between prosecution.)

MR. REYNOLDS: Have you got the search warrants, Your Honor?

THE COURT: I've got them both right in front of me.

(Conference between the court and Mr. Reynolds.)

MR. BUSSIÈRE: Your Honor, the State does not claim that the inventory return on the search warrant for the premises is significant. The point Your Honor is making with reference to this case going up to the Supreme Court did not go up on any of these points. There was no occasion to raise this point.

THE COURT: Well, there's a motion to suppress items on the search warrant.

MR. BUSSIÈRE: We want to support those two search warrants.

THE COURT: You're still leaving me completely in the dark. I think it's fair that you state now what you propose to introduce in reliance on the search warrants.

MR. BUSSIERE: We propose to offer on the premises, certain magazines that were observed, but not taken. We propose to introduce the vehicle and we propose to introduce the sweepings and the items listed on the return on the search warrant for the Pontiac automobile.

THE COURT: Well, I'm still a little confused. You said you proposed to introduce certain magazines that were observed and not taken. I assume that at some time they were taken, or you don't propose to introduce them.

MR. BUSSIERE: And well—an observation was made by number and name and a search warrant was issued, within a few days to get these magazines and they were removed. The State was unable to obtain them in specie and therefore the State went to magazine dealers to obtain them, or to obtain copies of the particular issues involved.

THE COURT: I guess I understand your position. That obviously is a separate issue, over and above any other issue. In other words, you're not saying that you propose to introduce any items taken from the house, but you do propose to attempt to introduce copies of certain items that some policeman observed there and went out to some newstand and obtained copies?

MR. BUSSIERE: Or procured them from newsdealers.

THE COURT: Well, I'm not—I'm only going to concern myself then this morning with the evidence on the —let me see if I understand your position. The only items you had in the search warrant on the house is the claim that this gave you a right to keep the car, which you got a separate search warrant for?

MR. BUSSIERE: That's correct.

THE COURT: And to introduce it into evidence.

MR. BUSSIERE: That's correct.

THE COURT: Under the search warrant to search the house . . .

MR. BUSSIERE: And also as an instrumentality of the crime.

THE COURT: And also your search warrant of the house, officers will testify that they saw in the house certain magazines?

MR. BUSSIERE: That's correct, Your Honor.

THE COURT: All right. I understand your position. You may proceed.

MR. REYNOLDS: Well, I don't, Your Honor, so I just take an exception. I'm just not sure what they . . .

THE COURT: I haven't made any ruling. How can you have an exception?

MR. REYNOLDS: This hearing right now is on the search warrant on the Pontiac.

THE COURT: The search warrant on the Pontiac and house, only as it affects the validity of the search warrant. I would not be ruling on the admission or exclusion of any evidence taken, because it might be excludable under another theory.

MR. REYNOLDS: Right.

Q (By Mr. Bussiere) Chief, you've been sworn and stated your name. Will you tell us—calling your attention to February 19th, 1964, whether or not you received a verbal report from Assistant Chief Norman Leavitt with reference to his activities at the University of Rhode Island Criminal Investigation Laboratory?

A I did.

Q And where was this Chief?

A That conference took place in my office at 351 Chestnut Street.

Q And had Asst. Chief Leavitt just returned from the University of Rhode Island?

A Yes sir.

Q And what report did he make to you orally?

A Asst. Chief Leavitt informed me that the ballistic experts that had tested bullets in their laboratory in Rhode Island had informed Asst. Chief Leavitt that the bullet was fired from a Mossberg .22 rifle and that is the rifle that was owned by Edward Coolidge.

Q Now, when you received that information, did you come to any decision? Well, strike that. Chief, I take

it that you, as a procedure—as a matter of fact, you were following the investigation of the Pamela Mason case, were you not?

A Yes, I was.

Q Now, when you received this information from Asst. Chief Leavitt, did you come to any decision as to what you desired to do?

A Yes sir. I realized that was pertinent information and I requested a meeting with the Attorney General that same afternoon.

Q Why did you want the meeting Chief?

A I wanted to discuss with the Attorney General the points of evidence that was gathered against Edward Coolidge.

Q Were arrangements made for you to go to Concord?

A Yes sir.

Q And who did you decide to take with you?

A I decided to take my subordinates with me. That would be Asst. Chief Leavitt, Capt. John Stips and Lt. John Curran of the Manchester Police Department. Also in attendance was Capt. Marchand of the New Hampshire State Police.

Q Now, why did you bring your subordinates with you to Concord?

A Because I wanted to go over the evidence that we had gathered through the investigation, and go over the evidence with the Attorney General and acquaint him with all the facts; and that is the reason why I brought the subordinates with me. In addition to—and to the information of the bullets, there was other pertinent information in evidence.

Q Now Chief, when you got to Concord, physically—what happened? Did you gather around a table some place?

A Yes, we did. We discussed the case in detail and present at the discussion was Attorney General William Maynard, Asst. Attorney General O'Neil and Asst. Attorney General Alex Kalinski. In addition, there was Colonel Regan of the State Police, Capt. John Conte of the State Police and—that's about it.

Q How long did this—how long were you up there Chief?

A Oh, for a minimum of two hours.

Q Now, will you tell the Court, in detail, what evidence you developed yourself, and through your subordinates, against Edward Coolidge, before William Maynard on that occasion?

MR. REYNOLDS: Objection, Your Honor. I think that's two questions. Would he break it down? His personal observation and evidence, as opposed to evidence handed to him through official reports.

THE COURT: Well, my understanding is—is the Chief would have no personal observation. It would all be based on reports, isn't that true, Chief?

THE WITNESS: Yes sir.

Q Now Chief, will you tell us what evidence that you developed through yourself and through the subordinates that you had brought up for that purpose to the Attorney General on that occasion?

MR. REYNOLDS: Well, my objection.

THE COURT: Well, you went right back to the same question, did you not?

MR. BUSSIÈRE: Yes, Your Honor. You just clarified it.

THE COURT: Why did you ask him what evidence he had obtained himself, when he just said he didn't have any?

Q All right. Just tell us what you had developed over there for the Attorney General?

MR. REYNOLDS: I'm going to object to the word developed. What reports of official information was given to him and by whom.

THE COURT: Will you accept that correction?

MR. BUSSIÈRE: Not quite, Your Honor.

THE COURT: All right. I'll sustain the objection.

Q Will you tell us what reports were—what reports you brought to the attention of the Attorney General on that occasion please?

A I brought the following reports to the attention of Attorney General Maynard: these reports were gathered from the investigating officers in the case; that by

Edward Coolidge's own admission, he did have control and owned that 1951 Pontiac on the night of January 13, 1964. That he could never satisfactorily explain his absence from his home at 312 Seames Drive on the night of January 13th, between the hours of 5:00 P.M. and 11:00 P.M. That a neighbor—a Mrs. Mahcu had related that he did not arrive home until 11:00 P.M. and when he did arrive, he immediately went into the bathroom. Now, as I received reports of this particular car—the Pontiac—it was observed on Route 93 north bound, about 9:10 P.M. on January 13th and in close proximity to where the body of Pamela Mason had been subsequently found on January the 21st. In addition, I related to the Attorney General the fact that many of the alibis that Edward Coolidge had presented were proven to be false; and for this reason I—that was the prime reason for our meeting.

Q Well, what new . . .

A To arrive at a decision.

Q Did you inform him of the report that Asst. Chief Leavitt gave you on that afternoon?

A Yes. That was the first report that I had made to the Attorney General and his assistants.

Q And I suppose, for the record, you have to repeat what that was Chief.

A Well, that was the information that the bullet that was recovered from the body of Pamela Mason was proven to be the bullet that was fired from a .22 Mossberg rifle that was owned by Edward Coolidge.

Q Did you relate to the Attorney General who had made those tests?

A Yes, I did. The tests were made by Mr. Grandchamp of Rhode Island and Dr. Harrison of the Rhode Island State College, both ballistic experts, as I understand it.

Q Did you relate to the Attorney General the facts that had been developed in Haverhill in reference to Edward Coolidge's attempt to establish an alibi over there?

A Yes, I did. Oh, I cited one or two incidents as they were related to me by the Inspectors.

Q And as you read their reports?

A Yes sir.

MR. BUSSIÈRE: May I inquire from the Court whether the Court also feels that we should go into more details of the evidence? Of what these characterizations of the evidence are, plus the fact that they were discussed for two hours?

THE COURT: May the Court state for the record the Court would not think of instructing the State how to conduct its case.

MR. BUSSIÈRE: I don't want to take up too much of the Court's time. If I could incorporate some of the previous testimony in the case that was recited before the jury.

THE COURT: I can't say anything differently, I don't think, properly, at this stage.

MR. REYNOLDS: Your Honor, does the record indicate at this point that these are discussions before the issuance of the search warrants?

THE COURT: I'm not certain.

MR. BUSSIÈRE: I'll clear this up, Your Honor.

THE COURT: I think these relate to the issuance of the warrant for arrest. It's my understanding that this is a report made by the Chief to the Attorney General, under our statute, and actually, he was in charge of this case as the final authority.

THE WITNESS: Right sir.

Q Well, as a result of the information that you brought to the attention of the Attorney General on that day, what action did you request be taken?

A I requested that the Attorney General file an arrest warrant for Edward Coolidge and in addition to the arrest warrant, for a search warrant. Four search warrants. One, to cover . . .

Q We only need to cover two of them at this time, Chief.

A Well, one to cover the 1951 Pontiac and the 1963 Chevrolet.

Q What was your purpose—strike that. Was that your purpose in presenting the facts that you previously related in evidence here, to obtain the search warrants and this arrest warrant?

A Yes, because there were certain—certain articles of clothing.

Q Well, I'll go into that in more detail. I understand that I cut you off and you only told us about two cars. Would you tell us the other warrants you wanted then, at that time?

A Would I . . .

Q I think you mentioned that you wanted a search warrant for the '51 Pontiac and the Chevrolet. Did you want some other warrants at that time?

A Yes.

Q What were they?

A The warrants . . .

Q No.

A The reason why I wanted search warrants?

Q No. No. Just a moment. What other—warrants did you want other than the search warrant for the '51 Pontiac and for the Chevrolet automobile owned by the defendant? Did you want some other warrants besides those?

A Yes. I wanted a warrant for the laundromat on Valley Street and a warrant for the home at 312 Seames Drive.

Q Did you also want an arrest warrant for the defendant?

A Yes, I did.

Q And did you indicate to the magistrate, William Maynard, that you desired to be the complainant on such warrants?

A Yes sir.

Q Now, at that point, Chief, what items which were the subject matter—what items which were the subject matter of the crime were sought by your department in relation to the case against Edward Coolidge.

MR. REYNOLDS: Objection, Your Honor.

THE COURT: May I hear the question please? Will you read it back please?

(Previous question read back.)

THE COURT: The objection is sustained.

Q Would you tell us what items were sought by your department in relation to the case against Edward Coolidge?

MR. REYNOLDS: Well, objection.

THE COURT: Sustained.

Q Well, Chief, at this conference, if you want to call it that, did you discuss, or did you—did you discuss what items were sought by your department?

A At this—at this meeting with the Attorney General, I discussed the items that—some of the items that were recovered at the—at the scene of the—at the body; and—among those articles—was a left handed gent's glove and—we were seeking a right hand glove. There were numerous school papers scattered on the snow. I believe there was—there was several articles that Pamela Mason was known to have in her possession when she left her home and certain articles that she was wearing when she left her home that were not on her body when it was recovered. We were particularly interested in—some material—that was missing from Pamela Mason's stretch pants. We were interested in recovering the—the bra, size 34, white bra and . . .

Q Chief, you may refer to some notes, if you have them, with that list of items that you have.

A These were the following notes that were listed in the search warrant. There was knives we were interested in recovering. Any knives. A pink wallet, containing photographs and ID cards of Pamela Mason. Waterproof cosmetic case. As I enumerated, white bra, size 34 B-cup. White nylon panties and rosette. Cardigan sweater, light color. Light—white crochet driver's gloves, leather palm. The left hand—man's pigskin glove, tan, right hand. The front section, rolled cotton jersey, cut off ski pajamas. Small pieces cut off crotch of olive green stretch ski pants. Pencils and ball point pens. Corner of green silk figured scarf and blood. pornographic literature. Workshop debris, including, but not limited to wood shavings, metal shavings, brass filings, hair and fibers.

Q Now Chief, would you tell us what facts were related to the Attorney General indicating that these sought items were in the 1951 Pontiac?

A We . . .

MR. REYNOLDS: Well, I'm going to object, Your Honor.

THE COURT: Let me hear the question again please.

(Previous question read back.)

MR. REYNOLDS: My objection is—are these all facts related by the Chief, or not?

THE COURT: I understand this is all the Chief's testimony of what he related to the Attorney General.

MR. BUSSIÈRE: Or what he developed through his subordinates in the presentation of the information. Again, that's why he brought his subordinates up there—to fill in the details.

THE COURT: I think he may answer. Then you may develop that in cross examination, it appears to me, Brother Reynolds.

Q Would you answer that question Chief?

A Yes. There was a certain amount of debris on the clothing of Pamela Mason, that could have come from the 1951 Pontiac sedan; and that is the reason why I wanted a search warrant of the 1951 Pontiac.

Q Well, what facts did you relate to the Attorney General indicating that the '51 Pontiac probably contained these things?

A From my information gathered from the Inspectors, the debris contained on the clothing of Pamela Mason had contained hair and various other substances; and subsequent vacuuming of the '51 Pontiac revealed . . .

MR. REYNOLDS: Well, objection, Your Honor.

THE COURT: I'm sorry, Chief, we can't use Monday morning quarterbacking on this. It has to be at that time sir.

Q What facts did you develop that made you think that these things would be in the '51 Pontiac Chief? You may refer to some of your previous testimony, if you prefer.

MR. REYNOLDS: I'm going to object to this word. I think the question should be, "What facts did he state."

THE COURT: Right.

A Well, in this type of crime—in this type of crime, that the perpetrator of the crime is prone to . . .

MR. REYNOLDS: I'm going to object, Your Honor.

THE COURT: He may continue.

A Are prone to cut off a garment or piece of a garment from the victim—or take hairs from the body of the victim, just as a future reminder of the experience—the incident. That's part of this type of crime.

MR. REYNOLDS: I'm going to take an exception.

Q Chief, you indicated that you had a report that the '51 Pontiac had been seen on the highway on January 13th of 1964, in a place of close proximity to the place where the body was found. Was that something that you brought to the attention of the Attorney General as indicating to you that the items that you were seeking were probably in the 1951 Pontiac?

MR. REYNOLDS: Objection.

THE COURT: Sustained.

Q Well, Chief, will you tell us what facts were related to the Attorney General, indicating that the sought items were in the 1951 Pontiac?

MR. REYNOLDS: Well . . .

A Would you repeat that question, please?

Q Certainly. What facts did you bring to the Attorney General's attention, indicating that the items that you've listed were probably in a 1951 Pontiac?

A I brought to the attention of the Attorney General that Edward Coolidge, by his own admission, had been driving that '51 Pontiac on the night of January 13th, and that—that he was, in fact, parked, by his own admission, in that particular part of Route 93.

Q Did you bring to his attention the report that you had, placing the car closer to the crime, Chief?

A Yes sir.

Q And the other information that you gave to the Court a little while ago, relative to ballistics and his absence—unexplained by the defendant—from his home, and so forth—did you bring all those things to his atten-

tion to indicate that the items which you were seeking were probably in his vehicle that he used that day?

A Yes sir.

MR. REYNOLDS: Objection.

THE COURT: Sustained.

MR. REYNOLDS: May it be stricken?

THE COURT: It may be stricken.

Q Will you tell us what items of his alibi were brought to his attention, indicating the items you were seeking were probably in his 1951 Pontiac?

A I don't—quite comprehend your question, counselor.

Q Well, all I want you to do, Chief, is to tell us what you made known to the Magistrate, William Maynard, to establish why you wanted to search the Pontiac, to look for the things that you wanted.

A I wanted to search the Pontiac to see if I could find any of these items that I have enumerated.

MR. REYNOLDS: I object, and move that it is not responsive to the question.

THE COURT: It may stand.

MR. REYNOLDS: All right, Your Honor.

Q Now Chief, I think one of your previous answers indicated that you wanted the Attorney General—you wanted to be the complainant to a charge of murder and some search warrants, is that right sir?

A Yes sir.

Q And as a result—did you convey this to the Magistrate?

A Yes, I did.

THE COURT: I didn't hear that. At what point does the Attorney General switch from being the Attorney General and become the Magistrate? Do you claim there's any magic in this phrase?

MR. BUSSIERE: Well, I'll go into that, Your Honor.

Q As you were presenting the items to William Maynard, were you doing that to him as a Magistrate or as an Attorney General?

A I was giving him that information as a Magistrate.

THE COURT: Hummm.

MR. REYNOLDS: Your Honor, I move that that be stricken, sir.

THE COURT: Yes, it may be stricken.

THE WITNESS: I would like to qualify that answer, Your Honor, because I expected him to take my affirmation, or oath.

MR. BUSSIÈRE: May it stand on that, Your Honor?

THE COURT: Well, I—Chief, I'm not concerned with—well, I don't want—well, all right, go ahead.

Q Chief, at some point later, after all this was developed, certain complaints—contained—strike that question. At some point, after all this information was developed in the presence of the Attorney General, were search warrants prepared and an arrest warrant prepared?

A Yes sir.

Q And did you notice whether those complaints that were contained in the search warrants contained a full description of the crime that you were charging Edward Coolidge with?

A Yes sir.

MR. REYNOLDS: Your Honor, I object. I think they speak for themselves, and this is a question of law.

Q Now Chief, did you swear to those complaint?

A Yes sir.

Q Did you swear to each warrant Chief?

A Yes, I did sir.

Q And that was a complaint under—signed by you as complainant?

A Yes sir.

Q And each warrant contained—each application for a search warrant contained a full recital of the complaint?

A Yes sir.

Q Now, when you swore to the complaint contained in the application for search warrants and to the complaint contained in the application for an arrest warrant, would you tell us what you were representing to the Attorney General, under oath?

MR. REYNOLDS: Objection, Your Honor. These speak for themselves—what he said under oath—that he read the complaint.

THE COURT: Do you claim that they don't explain it?

MR. BUSSIERE: I think the Chief will testify that when he swore to those affidavits, all the information was developed.

THE COURT: He may answer, for what it's worth. I'll tell you, quite frankly, I'm—well, he may answer.

MR. REYNOLDS: Subject to my exception.

THE COURT: Your exception.

A I swore that the statements contained therein was the truth, to the best of my ability and knowledge, on the information that was supplied to me and that I honestly believed that Edward Coolidge was the perpetrator of the murder of Pamela Mason.

Q And were you representing, under oath, Chief, the reliability and the veracity of all the information that was developed?

THE COURT: Brother Bussiere, this is your witness. Your questions are constantly leading.

MR. BUSSIERE: Well, I understand, Your Honor.

THE COURT: And this is a leading question that is about to be objected to by the defense and I will sustain the objection. We'll take a short recess at this point.

(Trial recessed at 11:39 A.M. and resumed at 12:23 P.M.)

Q (By Mr. Bussiere) Chief, will you tell us how long you've been connected with the Manchester Police Department?

A 36 Years.

Q Going back 36 years ago, Chief, and through those 36 years, will you tell us what procedure has been followed by the Manchester Police Department in obtaining search warrants.

A The same procedure that was followed in this Coolidge case.

THE COURT: Well . . .

THE WITNESS: And the—pardon me?

THE COURT: Chief, I assume that every search warrant—you don't seek it through the Attorney General?

THE WITNESS: No. No. That is so.

THE COURT: Who would you ordinarily go to?

THE WITNESS: We would ordinarily go to a Justice of the Peace. We would relate the fact to the Justice of the Peace. It wasn't necessary that we never, at any time—for instance, had the Inspectors swear to the contents of the search warrant.

Q Well, did you have them—did you just have them relate the facts to that Magistrate, is that correct sir?

A Yes sir.

Q And after that, an oath would be taken to a complaint charging the offense?

A Yes sir.

Q And that would be contained in the application for the search warrant?

A Yes sir.

MR. BUSSIERE: You may inquire.

CROSS EXAMINATION OF CHIEF McGRANAGHAN

BY MR. REYNOLDS:

Q (By Mr. Reynolds) Chief, do you have any notes, or reports, on this conference in the Attorney General's office on February 19, 1964?

A No, I do not.

Q Well, was your memory refreshed before you came in here by anybody?

A Yes sir.

Q By whom?

A I—well, we discussed—by the—County Attorney.

Q The County Attorney reminded you of the things that you said to the Attorney General?

MR. BUSSIERE: Well, Your Honor, may the record show I was not at that conference.

Q That's what I'm trying to get at, but that's true, isn't it?

A Yes, we went over the points of it.

Q The germane points, you went over them with the County Attorney?

A Yes.

Q But you have no notes at all about—or reports?

A On me, no.

Q Well, do you have any back at the station as to what transpired the afternoon of the 19th?

A Er . . .

Q As far as you were testifying to this morning.

A Yes, I believe there are notes at the station.

Q Notes written by you?

A No, not—it was a general note of who attended the conference and what then transpired. I'm quite sure there's a note to that effect.

Q You think you have one back at the station?

A I'm quite sure that there is.

Q Could I ask you, Chief, if you could get that for us and give it to the County Attorney, or to the Attorney General, in order that I may look at that? Not right this minute, but at some point over the week-end.

A Yes, sir, provided that there is a note. I say I'm morally certain there are.

Q Well, that's all I wanted to check. Chief, in issuing this search warrant, you didn't swear under oath to these facts that you were telling us about this morning?

A Yes.

Q Now, Chief, as I understand it, you swore and read the complaint?

A Yes.

Q But you were not under oath when you related all these other things?

A No. Prior to—not while we were discussing it.

Q Not while you were discussing it during the conference?

A In the conference, no.

Q And the Attorney General was, to your knowledge, in complete charge of that case, wasn't he?

A Yes.

Q And had been for a considerable period?

A The Attorney General would have been in charge of the case—when we . . .

Q Since the body was found?

A Since we gained knowledge of when the body was found—from the 21st.

Q At least from that point?

A Well, prior to that he was informed of the progress of her disappearance.

Q Were you the one who put Capt. Stips in charge of that case?

A Of the search for Pamela Mason, yes.

Q Well, not only that—he said he was Chief Investigative Officer.

A Yes, he is.

Q Are you the one that selected him?

A Yes sir.

Q And he testified that all these reports from the State Troopers and others, used to go to him?

A Yes, sir.

Q And then, did you require that he submit these reports onto—were these reports submitted to the Attorney General's office? Or a representative of him?

A Yes.

Q Chief, the average issuing of a search warrant, as I understand it, is made without going before the Attorney General. We'll take a Manchester robbery, we'll say . . .

A Yes.

Q A policeman comes and you say that he swears this out in front of a Justice of the Peace?

A That's right.

Q Well, he has to swear it out in front of a Justice of the Peace?

A Yes sir.

Q And now, as you know, there are many of us that are J.P.'s. You're a J.P.?

A Yes sir.

Q And can you give me the names, for example, of some of the J.P.'s over the years that have been used?

A In the police department, or . . .

Q Well, by the Manchester Police Department in getting out a search warrant.

A Well—I would—I think that I could tell you—with certainty, that—the Captains, for the most part, are Justices of the Peace.

THE COURT: You mean that another police officer issues these?

THE WITNESS: Yes. Captain Couture and Captain Shea and Captain Loveren are J.P.'s.

THE COURT: Well, let me ask you, Chief, your answer is to the effect that you never go out of the department for the Justice of the Peace?

THE WITNESS: It hasn't been our—policy to go out of the department.

Q Right. Your policy and experience, is to have a fellow police officer take the warrant in the capacity of Justice of the Peace?

A That has been our practice.

MR. REYNOLDS: I have nothing further.

THE WITNESS: In the past.

MR. REYNOLDS: That's all, Chief, except, would you look around for that note, or report about the conference on the 19th?

THE WITNESS: Yes sir.

MR. REYNOLDS: Thank you sir.

MR. BUSSIERE: That's all, Chief, thank you.

THE COURT: Does that complete the evidence that you desired to be offered on this point?

MR. BUSSIERE: Yes, Your Honor.

THE COURT: Defense? That's all for you, Chief. I'm sure you may step down. Thank you.

MR. REYNOLDS: That's all, Chief. Yes, as far as the witness testifying, Your Honor, except we would like to have the Court incorporate the testimony taken in our prior hearings last August and September. I went into some detail with Chief Leavitt, regarding items inventoried as being different—for example—than what they were looking for.

THE COURT: All right. It may be so incorporated. As far as any evidence is concerned, we'll adjourn until 10:00 o'clock Monday morning. I'll see counsel in chambers now.

(Trial recessed at 12:30 P.M. Chambers conference at 12:40 P.M.)

THE COURT: All right. After hearing the evidence of Chief McGranaghan this morning, the Court finds that Chief McGranaghan and the officers most closely connected with the investigation went to the Attorney General's office in Concord, reviewed the entire evidence

up to that point which the police had in their possession; and that the Attorney General, based upon this review of the evidence, which was not under oath, made a decision as Attorney General that the—a warrant should issue for the arrest of Edward Coolidge, Jr., on a charge of first degree murder of Pamela Mason. The Chief related also to the Attorney General that he felt a search warrant should issue for the searching of the house of the defendant, the Pontiac and Chevrolet automobiles and the laundromat which was under the control of the defendant. Was it, at the time?

MR. REYNOLDS: There's no evidence it's his. Didn't he say it was his aunt's laundromat?

THE COURT: And the defendant's aunt's laundromat. Go off the record for a moment.

(Discussion off the record.)

THE COURT: The reasons the items—the evidence—or the review of the evidence by the Chief—the reasons why it was felt that these items would be evidence, useful in the prosecution of the case, were presented to the Attorney General in his capacity as Chief prosecuting officer of the State of New Hampshire. Subsequent to the presenting of this unsworn to testimony, the Attorney General, acting as Justice of the Peace, took the oath of the Chief to the search warrants, which have been offered in evidence and are marked in evidence. The Court would find that the only act that the Attorney General did as—in his capacity as a Justice of the Peace, was in the taking of the oath and that the evidence had been previously presented to him; and reviewed to him in his capacity as Attorney General. The Court would further find that much of this evidence was previously in the possession of the Attorney General. The Court would find further that a neutral and detached Magistrate, having this evidence presented to him, whether under oath or not, by the parties giving it, would have been persuaded that there was probable cause for the arrest of Edward Coolidge for the murder of Pamela Mason; and that there was probable cause for the issuance of the warrants as issued. The Court finds that

the statements of the Chief included a complete review of the evidence and was based upon reliable information, as far as the police investigation was concerned. Go off the record.

(Discussion off the record.)

THE COURT: The search warrants probably should be re-marked for this case.

MR. REYNOLDS: It's easier, because the transcript refers to their different numbers.

THE COURT: The markings—the search warrants and arrest warrant—aren't they referred to in that prior record?

MR. REYNOLDS: That's what I meant, Your Honor.

THE COURT: The incorporation of the evidence taken at the prior hearing on the search warrants, which resulted in the Supreme Court's decision in the case of the State v Edward Coolidge, Jr., which is No. 5316, March 11th, 1965, included the incorporated marking of the search warrants. The Court rules specifically that if the State offers hairs, or debris from the Pontiac car, that it will be admitted as included in the items to be searched for in the search warrant. The Defendant's exception is saved to both of these rulings. The Defendant's exception is saved to all of these rulings.

MR. REYNOLDS: May I please say a few things on the record? I know you don't want me making speeches, but I'd like to make a little speech.

THE COURT: All right.

MR. REYNOLDS: May I ask the Court if, in view of Chief McGranaghan's testimony, the Court feels there is now evidence from which the Court could make a ruling as to whether the Attorney General was neutral and detached at the time he issued the warrant?

THE COURT: I thought that my ruling was that except for the taking of the oath, which was no different than the taking of the oath and the issuance of the warrant, was to me a purely administrative act by a Justice of the Peace. My ruling covered under what circumstances he acted.

MR. REYNOLDS: O.K. The defendant—the reasons for the exceptions that none of these items should be admissible, is under the clear mandate of *Aguilar vs. Texas* and cases cited therein—*Johnson*, *Nathanson*, and *Giordenello vs. U.S.*, because not only are they not under oath, but within the meaning of the *U.S. vs. Ventresca*, that which was under oath is purely conclusionary. The 4th Amendment states that all facts must be under—I believe, the interpretation is—there must be facts under oath. The other point the defendant raises is that this complaint was to a charge of first degree murder and enumerated fifteen items to be searched for in four geographically distinct places.—the house—his two cars and his aunt's laundromat. That there was not testimony by Chief McGranaghan giving any facts to show probable cause for the search of these fifteen items in his automobile. I believe his only testimony was that the girl was missing and found dead on Route 93. The defendant didn't have an alibi for 93 and tried to frame an alibi; and that our client's car was down on Route 93 and I believe the facts—would you—that it was in the north bound lane, not next to the girl's body, but in a different lane. Now, if these are the only facts and I think the State stipulates—again, there isn't enough facts to begin to warrant the search of his automobile for these fifteen different items. Secondly, the items requested to be searched are so vague that it constitutes a general warrant—within the meaning, which is forbidden under our Constitution. I refer the Court to *Stanford vs. Texas*. In other words, there's just a statement to look for hairs and fibers. There's no representation that—or facts presented, that there are hairs or fibers of the decedent in the defendant's car. I further—just mention that I believe that under Article 4 of the Constitution of the United States that—the—and—and I quote—"the Justice in every State shall be bound thereby. Anything in the Constitution or laws of any State to the contrary notwithstanding—" referring to the rulings of the United States Supreme Court; and that if this Court feels, as it did indicate, that the situation and fact presented in *Aguilar*—then I feel that the Court has erred

—in not following Aguilar and the cases cited therein, regardless of what the interpretation is, because it isn't very clear what is on our State's opinion on State vs. Coolidge.

THE COURT: Don't you want to strike out "because it's not very clear"?

MR. REYNOLDS: I don't . . .

MR. GRAF: May I just say one thing? Is it my understanding that all issues—Constitutional issues raised by the presentation of the items, with reference to the search—our objections are saved

THE COURT: Your exceptions are saved to everything.

[Vol. VI, p. 230, l. 3 end of page]

—CHIEF McGRANAGHAN

MR. MAYNARD: I think Your Honor found that I acted in this as impartial and detached, in spite of myself.

THE COURT: I found that an impartial Magistrate would have done the same as you did. I don't think, in all sincerity, that I would expect that you could wear two pairs of shoes. I'm off the record—I'm sorry.

(Remainder of chambers conference—off the record)

[Vol. VII, p. 1,-p. 2]

THE COURT: The Court desires further to find that in view of the fact that these search warrants were issued simultaneously with the murder warrant—that the search warrant did not result in any unreasonable search or seizure, under the facts and circumstances surrounding the issuance of the warrants. The Court further finds that the—that the complaint under oath, by the Chief of police, before the Attorney General, as a Justice of the Peace, complied with 595-1, R.S.A., on the issuance of search warrants and, in effect, summarized the—completely the statements made not under oath by the police Chief and the officers present. That's all I have.

Let me say this—the Court further—no, that's all, I guess.

MR. REYNOLDS: Could I note my exception, again, Your Honor.

THE COURT: Yes, I'll note your exception.

* * *

[Vol. VII, Direct p. 29-p.30] —NORMAN LEAVITT

MR. MAYNARD: . . . This box, which you have given me as containing the sweepings, or vacuumings, from the 1951 Pontiac of the respondent Coolidge—how did these initially come into your possession?

MR. LEAVITT: I vacuumed the Pontiac on the afternoon of February 21st, 1964 and on February 24th, 1964 I took those vacuumings to the University of Rhode Island and turned them over to Dr. Harrison. Then on May 1st, 1964—I'm sorry—1965, I brought those back from the University of Rhode Island—under the direction of the Attorney General.

* * *

[Vol. VII, Direct. p. 37-p.39, L. 20] —NORMAN LEAVITT

(Chambers conference concluded—trial resumed in the court room at 10:56 A.M.)

Q (By Mr. Maynard) Asst. Chief Leavitt, did you participate in the arrest of the respondent Coolidge?

A I did, yes sir.

Q And did you help in formulating the procedure for the arrest?

A I did, yes sir.

Q And will you tell us what procedure was used? Will you tell us what happened incident to the arrest of the respondent Coolidge? What the procedure was and how it was executed.

A In addition to myself, there was Capt. Stips of the Manchester Police Department, Capt. John Marchand and Detective Sergeant William Esson of the State Police. We went to the Coolidge home at 312 Seames Drive and arrived there about 7:40 P.M. on February 19, 1964.

Capt. Stips and I went to the front door and the State Police were instructed to go to the back door. Capt. Stips rang the front door bell. Edward Coolidge opened the front door. We identified ourselves—asked him if we could come in. He invited us in. We then went through the living room to the kitchen—told him that there were State Police at the back door and that we would like to have him let them come in and he did let them come in. We identified ourselves again to Edward Coolidge, in the kitchen, and told him—I told him that I had a warrant for his arrest for murder. He asked to see the warrant and I took the warrant out and gave it to him to read—and he did read it. There was no comment. He only shook his head side to side. He may have murmured "No". at that time, I warned him of his rights and told him that he would have to come with us. He then requested—he was then dressed in shoes and socks, trousers and a T-shirt. He then requested his wife to bring him a shirt and a jacket, which she did. Then he asked to see the warrant again. I took the warrant out and informed him it was the same warrant he had read just a few minutes previously. I handed it to him again and he read the warrant again and at that time, he said, "My rifle never left my home that night." Then he put on his shirt and jacket. I put handcuffs on his wrists and we took him out to the cruiser and brought him to the police station. We booked him for murder at 8:00 P.M.—then took him to the third floor Inspectors Division. We asked him to remove his clothing, which he did, and Capt. Stips and I placed that clothing in plastic bags and provided denim dungaree clothing for him to wear. At 8:05 P.M. he was allowed the use of the telephone to call his attorney and someone sat with him then in a room of the Inspectors Division, until his attorney, William Craig, Jr., arrived there at 8:25 P.M. During the intervening time, between 8:05 and 8:25 P.M., no one interrogated him.

Q Was anything done with respect to his automobiles?

A His automobiles were later removed from the driveway of his home to the police station garage, under the direction of Capt. Stips.

Q And what happened to the custody of the two automobiles?

A The automobiles were placed in the police department garage and locked; and I maintained custody of the keys for those automobiles. On February 21st, I turned the 1963 Chevrolet convertible over to Attorney William Craig, Jr., and obtained a receipt for it; and the 1951 Pontiac is still in our police department garage and I still have the keys for it.

Q And on what date was the Pontiac taken to the police station?

A February 19th, 1964.

Q The same time of the arrest?

A Yes sir.

[Vol. VII, Cross p. 49]

—NORMAN LEAVITT

MR. REYNOLDS: Actually the execution on these search warrants—when did you conduct the search?

A The morning of the 21st—I'm sorry—of the 20th.

Q You can look at your notes, if you want.

A We searched the laundromat the afternoon of the 20th. We searched the Coolidge home and the following day, in the morning we searched the 1963 Chevrolet; and in the afternoon we searched the 1951 Pontiac.

Q As I understand it, no search pursuant to the search warrants, took place the night he was arrested?

A This is correct.

Q And some took place on the 20th and some on the 21st?

A That is correct.

Q When was the Pontiac searched?

A On the afternoon of the 21st?

[Vol. VII, Cross p. 53]

—NORMAN LEAVITT

MR. REYNOLDS: O.K. Now, at 2:00 p.m. on the 21st—you vacuumed the 51 Pontiac?

A Yes sir, between 2:00 and around 4:00 P.M.

[Vol. VIII, Cross p. 92]

—CARROLL DURFEE

MR. REYNOLDS: And these items of pillow, army jacket,—these five from his '51 Pontiac were done—vacuumings—January 4, '65?

MR. DURFEE: That is right.

Q That's almost one year after she was last seen, is that right?

A Yes, this is January 4th of '65.

Q And going on—these—Coolidge jacket, pants and toque was that in January of '65?

A I think those were done sometime in December, but I can't tell the exact date.

Q It would have been either December of '64 or the first of '65 probably?

A Some time like that.

Q And sets 110 and 111 and 112, from the '51 Pontiac, were done April 10, 1965—just a little over a month before this trial?

A Yes.

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[Vol. VIII, Cross p. 140-p. 141]

—CARROLL DURFEE

MR. REYNOLDS: Did you participate in going up—in any vacuuming of the '51 Pontiac? Did you go in the car and vacuum it at any time?

MR. DURFEE: In the removal—in the first cleaning of the car, you mean when that stuff was . . .

Q No. At any time, will you tell me, did you participate in the vacuuming of the '51 Pontiac, and if so, when?

A Yes. Early in April, I believe it was—that—we made a further study, or examination of the car, and did some more vacuum cleaning.

Q Yes. You mean April of this year?

A That is right.

Q So a month before the trial, you were still—you went up and participated in the vacuuming?

A That's right, or I did it myself.

Q All right. You got in the car and vacuumed—all over?

A No.

Q Certain parts?

A That is right.

* * * *

[Vol. X, p. 192]

MR. REYNOLDS: And of course, Your Honor, I renew all motions on the search and seizure and 4th, 5th and 6th Amendment rights, whether it's taking from her house the guns and the questioning at the station, which turned out to be fourteen hours, without . . .

THE COURT: Incidentally, I noticed that our—that the motion with reference to the search warrants has got down to a smaller and smaller number of items. Now we're only concerned with a few small particles, aren't we?

MR. REYNOLDS: Right. I wanted to say the search warrants.

THE COURT: Denied, subject to your exception.

* * * *

[Vol. XII, p. 298-p. 299]

THE COURT: All right. You want to make some motions—or renew all your motions at the close of the State's rebuttal?

MR. REYNOLDS: Yes, I do.

THE COURT: I'll deny them all and note your exception. Now, do you want anything else.

* * * *

[Vol. XII, p. 318]

THE CLERK: Mr. Foreman, have you reached a verdict?

MR. LIVINGSTON: Yes, we have reached a verdict.

THE CLERK: Mr. Foreman, on the indictment charging Edward H. Coolidge, Jr., with the premeditated murder in the first degree of Pamela Mason, how find you the Defendant, Edward H. Coolidge, Jr.?

MR. LIVINGSTON: Guilty.

* * * *

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THE CLERK: Mr. Foreman, on the indictment charging Edward H. Coolidge, Jr., with the kidnap-murder of Pamela Mason, how find you the Defendant, Edward H. Coolidge, Jr.,

MR. LIVINGSTON: Guilty.

* * * *

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.

APRIL TERM, 1965

St. 3136, 3137

THE STATE OF NEW HAMPSHIRE

v.

EDWARD H. COOLIDGE, JR.

RESERVED CASE

Indictment charging the defendant with murder in the first degree and kidnap murder in violation of RSA 585:1.

Trial by jury with a view resulted in a verdict of guilty.

Prior to and during the course of the trial the defendant seasonably excepted to the denial of various motions and of his motions to quash the indictment, to dismiss the indictment, to certain rulings of the Court admitting and excluding evidence, to certain rulings of the Court allowing portions of the State's arguments and disallowing portions of the defendant's argument, to certain portions of the Court's charge, and to the failure of the Court to charge as requested, all of which appear more particularly in the transcript.

After verdict, the defendant seasonably excepted to the denial of his motion to set aside the verdict, for judgment notwithstanding the verdict, and for a new trial.

These and other exceptions appear more particularly in the transcript and the appendix.

All questions of law raised by the foregoing exceptions and any exceptions appearing in the transcript and appendix are reserved and transferred. The pleadings, including all motions with the Court's action thereon, the defendant's requests for instructions, and a list of the exhibits transferred are to be printed as an appendix and are reserved and transferred.

ROBERT F. GRIFFITH
Presiding Justice

OPINION IN STATE V. COOLIDGE, 109 N.H. 403

HILLSBOUROUGH,

No. 5514.

STATE

v.

EDWARD H. COOLIDGE, JR.

Argued December 20, 1968.

Supplemental argument June 3, 1969.

Decided June 30, 1969.

On February 26, 1964, the grand jury returned two indictments charging the defendant with the murder of Pamela Mason on January 13, 1964. The first indictment charged murder in the first degree by assault with deadly weapons, consisting of a Mossberg rifle and a knife. RSA 585:1. The second indictment charged the defendant with murder by the same means in the course of committing the crime of kidnaping Pamela Mason, a minor child of the age of fourteen years. RSA 585:1, 20.

Trial was by jury, before *Griffith, J.* The defendant was found guilty of the offenses charged by both indictments. Throughout the proceedings the defendant was represented by assigned counsel. All questions of law presented by his exceptions taken prior to and during the trial, and after the verdicts were reserved and transferred by the Presiding Justice.

Alexander J. Kalinski, special counsel (by brief and orally), for the State.

Matthias J. Reynolds, John A. Graf, Robert L. Chiesa, and Stephen J. Spielman (by brief and orally), for the defendant.

DUNCAN, J. In January 1964, Pamela Mason resided with her parents and younger brother at 51 Donald Street in Manchester. She was a student at West High School, and upon occasion hired out after school hours as a baby sitter. On the afternoon of January 13, 1964

her mother received a telephone call from a man who sought a baby sitter for that evening. Mrs. Mason suggested that he call again after school hours. Pamela arrived home from school at about 4:15 P.M. and at 4:30 P.M. Mrs. Mason left for work at the Holiday Inn. A severe snow storm was then in progress. Before leaving, Mrs. Mason told Pamela of the expected phone call, and cautioned her against leaving the house to baby sit unless a woman should call for her. Shortly thereafter Pamela received a telephone call which her brother answered, but did not overhear. The caller was a man. Pamela then prepared supper for herself and her brother. She left the house at some time between 5:45 and 6:00 P.M. while her brother was assisting the landlord in installing an electrical fuse in the basement. No one saw Pamela leave the driveway. Because of the storm her mother did not return until about 3:00 A.M. on January 14, 1964. Pamela's family and the authorities had no further information concerning her whereabouts until January 21, 1964, when a passing truck driver discovered her lifeless body lying west of the southbound side of interstate highway 93, in Manchester, about six-tenths of a mile north of the Manchester-Londonderry line.

The storm of January 13 continued until midnight. It was a major storm with blizzard conditions and a fall of eleven inches, temperatures between seven and fifteen degrees, and heavy drifting. Temperatures remained below freezing through January 16, 1964 and on the night of January 20, 1964, a rain storm commenced.

An autopsy performed on the evening of January 21, 1964 showed that death resulted from several gunshot and knife wounds, including severance of the jugular vein. There was expert testimony that death had occurred on January 13, 1964 some two to four hours after the victim's last meal.

The evidence connecting the defendant with the crime was wholly circumstantial. He was employed by Cote Brothers Bakery as a route man. Evidence that he was absent from his home at 312 Seames Drive in Manchester

between 5:30 P.M. and 11:15 P.M. on January 13, 1964 was not disputed. The defendant took the stand in his own behalf and denied all knowledge of the crimes charged. He admitted that he had attempted following January 13 to establish an alibi for his whereabouts that night, but asserted that in fact he had driven his Pontiac to Haverhill, Massachusetts to look for a gift for his wife for their wedding anniversary on January 15, 1964.

Various issues arising out of pretrial proceedings in these cases were considered by this court in *State v. Coolidge*, 106 N.H. 186, and *State v. Superior Court*, 106 N.H. 229. In support of the exceptions transferred following the trial the defendant relies both upon the broad proposition that there was insufficient evidence to warrant his conviction, and upon numerous alleged violations of his rights under the State Constitution and the Fourth, Fifth, and Sixth Amendments to the Constitution of the United States, alleged errors relating to the admissibility and exclusion of evidence, and in the denial of various motions made during and after the trial.

The defendant's exception to denial of his motion for directed verdicts of acquittal upon the ground that the evidence did not warrant a finding of guilty beyond a reasonable doubt cuts across other exceptions, and its consideration requires a survey of the evidence. That there was evidence to warrant a finding that the victim was murdered is not a debatable question. It could also reasonably be inferred that kidnaping accompanied the offense.

As previously stated, evidence which pointed to the defendant as the perpetrator of the crime was circumstantial. The State produced evidence that the fatal bullets were fired from the defendant's gun. It was established that he owned more than one knife which could have inflicted the knife wounds, and that one of his knives was lost on the day that the victim disappeared, and found on the following morning near a laundromat which the defendant testified he had visited before going home the night of the 13th. The defendant

conceded that on the night of January 13, 1964 he had been stationed in his Pontiac at the northbound side of Route 93 nearly across from where the victim's body was later found. There was other evidence that his Pontiac was then seen at 9:30 or 9:45 P.M., headed north, approximately across from where the body was found west of the southbound lanes.

There was evidence that comparison of a variety of particles of material found upon the defendant's clothing and in his Pontiac with particles found upon the victim's clothing showed similarities in such a number of instances as to indicate by the law of probabilities that there had been contact between the victim, and the accused or his vehicle. There was evidence that the telephone call which Mrs. Mason received on the afternoon of January 13, 1964 was that of a man whose voice Mrs. Mason later identified as "very similar" to that of the defendant, and that Pamela disappeared shortly after she received another call from a man.

There was evidence that on the day after the disappearance and as late as January 24, the defendant engaged in elaborate attempts to establish an alibi for the night of January 13; and that on January 21, when thawing conditions prevailed and the body was found, but before its actual discovery, he had said that "now" he "really needed an alibi." His explanations of his activities on January 13 and of his presence, stopped on the highway that night, could be found incredible. His acknowledged activities in the week which followed January 13 warranted an inference of guilt. *State v. Thorp*, 86 N.H. 501, 507.

There was evidence that the victim died within two to four hours of her last meal, and expert testimony to warrant a finding that death occurred on January 13. In the absence of evidence suggesting that death occurred outside of Hillsborough County, the discovery of the body within the Manchester limits warranted a finding that the crimes were committed there.

The proof, however, was not wholly free from weaknesses. No one witnessed Pamela's departure from her home, or could say under what circumstances it actually

occurred. The time lapse between her departure at 5:45 or 6:00 P.M. and the discovery of the defendant in his automobile near the scene where the frozen body was later found was approximately three and one-half hours. The evidence showed that when found the body was without undergarments, the blouse had been removed, but was frozen to the victim's back. A jacket, ski pants, socks, and boots were in normal position, but the pants were torn or cut at the crotch, and the zipper was jammed. The victim's books, pocketbook, and scarf were scattered over the area. The body was exsanguinated, but there was no evidence of blood discovered in the defendant's car or upon his clothing and there was little blood on the victim's clothing. There was expert testimony that no anatomical evidence demonstrated that she was killed at the place where she was found.

The limitations of time served to cast doubt upon the likelihood that the State was correct in its theory that the crimes had been committed in a space of three and one-half hours of extremely stormy weather. Further doubts were cast by evidence that the defendant was seen at a Manchester club at about 5:30 P.M. and that between 6:30 and 7:00 P.M. he saw an acquaintance at the Sears-Roebuck store on Elm Street, who was in fact there at that hour.

In the field of ballistics, the credibility of the State's evidence was strained by events which transpired at the trial. Certain of its experts testified that the murder weapon received in evidence had also fired the bullets which had killed Sandra Valade, another minor, in February, 1960. Evidence later produced by the defendant established that he had not acquired the weapon until December 1961 when it was sent to him by mail direct from the manufacturer. Additionally, two experts who had examined both the Balade and Mason bullets testified that the Valade bullets had not been fired from the defendant's Mossberg rifle. One of them called by the defendant testified that the Mason bullets were not so fired. The other declined to give an opinion as to whether the Mason bullets were or were not so fired, for lack of sufficient opportunity to reach a final conclusion.

The evidence concerning matching particles was arguably inconclusive on the issue of probability. Twenty-seven particles from sources connected with the victim were said to match twenty-seven particles from sources related to the defendant; but evidence that each set of matching particles was independently different from other matching sets so that no duplication existed, was less positive. Tested by neutron activation analysis, only four of fourteen particles from both sources were claimed to have a common origin.

Considering the evidence as a whole, and the inferences which could reasonably be drawn, both favorable and unfavorable to the defendant, and granting that a finding of guilt was not compelled, yet we cannot say that the jury which heard and saw the witnesses could not reasonably have been convinced, beyond a reasonable doubt, that the defendant committed the crimes with which he was charged. Even if doubt existed that the murder was committed on January 13, 1964, the conclusion that it was committed at some time thereafter was not foreclosed. The defendant had failed to check in for work on January 14, 1964, there was evidence that he was in Haverhill on that day, and his regular daily work route took him past the spot where the body was found.

We hold that denial of the defendant's motion for acquittal was not error. It follows that the evidence, if properly received, and believed, warranted the verdicts of guilty. They must stand unless errors at the trial or some violation of the defendant's rights require that they be set aside. We therefore turn to consideration of other exceptions argued by the defendant.

Certain constitutional issues presented pertain to the defendant's right to be free from unreasonable searches and seizures, his right to counsel, and his privilege against self-incrimination.

In particular it is argued that events which transpired on February 2, 1964, constituted an invasion of the defendant's rights and privileges. The nature of these events was detailed at length in *State v. Coolidge*, 106 N.H. 186, *supra*, and need not be repeated here. They are now pertinent primarily because of the evidence that

the Mossberg rifle received in evidence at the trial as the murder weapon was procured from the defendant's wife by police officers on that occasion, and because the defendant was questioned by police on that day, without provision of counsel.

The contention that the rifle and articles of clothing were procured by unreasonable search and seizure was considered on the prior transfer, and the issue was decided adversely to the defendant. The defendant's contentions were renewed at the trial. We find no reason to depart from the conclusions previously reached in *State v. Coolidge, supra*, which are now further supported by authorities since decided. *Frazier v. Cupp*, — U.S. — (No. 643, decided April 22, 1969); *United States v. Retolaza*, 398 F. 2d 235 (4th Cir., 1968); *United States v. Alloway*, 397 F. 2d 110 (10th Cir., 1968); *Maxwell v. Stephens*, 348 F. 2d 325 (8th Cir., 1965); *Commonwealth v. Rundel*, 432 Pa. 466. See also *United States v. Stone*, 401 F. 2d 32 (7th Cir., 1968); *Jenkins v. State*, (Del.), 230 Atl. 2d 202, 269-270; Note, Third Party Consent, 1967 Wash. U.L. Q. 12, 25-27. Cf. *Bumper v. North Carolina*, 391 U.S. 543.

The defendant's argument with respect to his interrogation by police on February 2 and 3, 1964 cannot be sustained. His objections at the trial were overruled by the Trial Court after full consideration, in the absence of the jury, of the circumstances in which the interrogation occurred. The Court found and ruled that on February 2 and 3 the investigation had not become accusatory within the meaning of the rule announced in *Escobedo v. Illinois*, 378 U.S. 478, and accordingly that the defendant was not entitled to the warnings, or to the assistance of counsel, which the rule of that case would require. *State v. Santos*, 107 N.H. 490. *Miranda v. Arizona*, 384 U.S. 436, decided, after this trial, on June 13, 1966, does not apply to this case. *Frazier v. Cupp, supra*; *State v. Santos, supra*.

We are satisfied that the findings and rulings of the Trial Court were amply supported by the evidence, which showed that a general investigation of some fifty suspects by innumerable state and city police was continu-

ing up to February 19, 1964, the date of the defendant's arrest for murder following the first reports that ballistic studies showed the fatal bullets to have been fired by the defendant's rifle.

The evidence of the telephone call made by the defendant to Mrs. Mason on February 2, for purposes of voice identification, and Mrs. Mason's testimony concerning it, was properly received since it involved no "testimonial communication" which would violate the defendant's constitutional rights. *Schmerber v. United States*, 384 U.S. 757; *United States v. Wade*, 388 U.S. 218; *Stovall v. Denno*, 388 U.S. 293.

The events of February 2 are further pertinent at this time because the police then obtained articles of the defendant's clothing at his home from which particles were obtained which were received in evidence at the trial. See *United States v. Alloway*, 397 F. 2d 110 (10th Cir. 1968), *supra*. Other particles were likewise procured pursuant to the search warrant of February 19, 1964, the validity of which was upheld on the prior transfer. The warrant provided for the seizure among other things of debris, including wood and metal shavings and filings as well as hairs and fibres. Vacuumings of the defendant's automobile took place on February 21, and 24, 1964 and later, on January 4 and April 10, 1965.

Reconsideration of our prior holding with respect to the validity of the search warrant issued on February 19, as urged by the defendant, leads us to no new conclusion. The circumstances surrounding the issuance of the warrant were fully explored at the trial in the absence of the jury. The Court's findings and rulings that the evidence presented to the magistrate was based upon reliable information and warranted his finding of probable cause, are sustained.

The record shows that the magistrate was fully informed as to "the facts relied upon by the complaining officer to show probable cause," and also as to the underlying circumstances from which it was concluded upon reliable information that the articles for which the warrant was issued might be found in the places to be searched. *Aguilar v. Texas*, 378 U.S. 108, 113, 114;

State v. Coolidge, 106 N.H. 186, *supra*, 197-201; *State v. Titus*, 106 N.H. 219. See *Spinelli v. United States*, — U.S. —, 89 S. Ct. 584.

Acting lawfully to enforce a valid warrant, the police were free to seize evidence other than that specified by the search warrant. *Warden v. Hayden*, 387 U.S. 294; *Frazier v. Cupp*, *supra*; see *Stanley v. Georgia*, 89 S. Ct. 1243, 1251 (concurring opinion). Having properly impounded the defendant's automobile as an instrumentality of the crime (*Palmer v. United States*, 203 F. 2d 66; (D.C. Cir., 1953); *Bryant v. United States*, 252 F. 2d 746 (5th Cir., 1958); *State v. McCoy* (Ore.), 437 P. 2d 734), the investigating officers could properly seize whatever evidence was to be found therein, whether on February 24, 1964 or as late as April 10, 1965. *Frazier v. Cupp*, *supra*; *Cooper v. California*, 386 U.S. 58; *State v. Hutton*, 108 N.H. 279, 289.

We find no violation of the defendant's constitutional rights in events of February 2 and 3, 1964, or in the issuance of the search warrant of February 19, 1964 and the conduct of the officers pursuant thereto.

Another constitutional argument advanced by the defendant is that he was denied the speedy trial guaranteed to him by Art. 14 Pt. I of the Constitution of New Hampshire, and the Sixth Amendment to the Constitution of the United States. *Klopper v. United States*, 386 U.S. 213. While he complains first of postponement of the probable cause hearing following his appearance before a magistrate on February 20, 1964, no constitutional right was thereby violated, since he was indicted by a grand jury six days after his arraignment. The occasion for a probable cause hearing thereupon ceased to exist. *Smith v. O'Brien*, 109 N.H. —. And see, *State v. Myal*, 104 N.H. 188.

It is factually true that the defendant was indicted on February 26, 1964, and brought to trial over a year later, on May 17, 1965. However this does not establish a deprivation of constitutional right. Note, *Speedy Trial*, 20 *Stanford Law Rev.* 476 (1968). The right is one to "orderly expedition and not mere speed." *United States v. Ewell*, 383 U.S. 116, 120. The accused is entitled to

be free from capricious and oppressive delays (*Fleming v. United States*, 378 F. 2d 502 (1st Cir., 1967); *Rien-deau v. Milford Municipal Court*, 104 N.H. 33, 34), but the procedural safeguards afforded him necessitate a deliberate pace. *United States v. Ewell*, *supra*.

Following indictment in this case, the defendant was also indicted on March 26, 1964 on similar charges arising out of the death of Sandra Valade on February 1, 1960. On April 3, 1964, counsel were appointed to represent him. On April 7, 1964, he moved for continuances to the September 1964 term, which were granted. On June 30, 1964, the Court heard his motions for discovery filed on April 13, and 28 and June 19, 1964. In July 1964 he moved to suppress certain evidence. These motions were heard on August 31, September 1, October 6, and October 13, 1964. As a result, findings of fact were made by the Trial Court, and questions of law presented were transferred to this court. They were argued on January 8, 1965, and decided on March 11, 1965. *State v. Coolidge*, 106 N.H. 186.

One of the attorneys appointed to represent the defendant died on January 2, 1965, and new counsel was appointed in his place in the following month. On February 2, 1965, pending the decision of this court, the defendant filed motions to quash and dismiss all indictments for failure to provide a speedy trial. After hearing, these motions were denied on February 20, 1965, when the Trial Court found that certain factors which had contributed to the delay "have also improved the opportunity to have a fair trial." At the same time, the indictments in the Mason case were assigned for trial to commence May 17, 1965.

On March 12, 1965, the Trial Court entered an order for discovery pursuant to a motion filed by the defendant on March 4, 1965. This was in part sustained and in part vacated by this court on April 13, 1965, on the State's petition for a writ of prohibition upon which arguments were heard March 29, 1965. *State v. Superior Court*, 106 N.H. 228. The trial date of May 17, 1965 was unaffected by the latter proceedings, and selection of a jury commenced on the assigned date.

This is not a chronicle of unreasonable or unjustified delays, but rather of diligent and careful consideration of issues having potentially decisive relation to the course of the trial, and of protection of the rights of both the defendant and the State. The issues were disposed of "according to the prevailing proceedings of law," free from purposeful but unreasonable delays. *Riendeau v. Milford Municipal Court*, *supra*. We hold that the motions to dismiss upon the ground of infringement of the right to speedy trial were properly denied. See Standards Relating to Speedy Trial, (approved Draft, 1968) A.B.A. Project on Minimum Standards for Criminal Justice; p. 25 et seq.

A whole series of contentions advanced by the defendant relates to his inability to obtain a disclosure of the State's evidence because of (1) denial of pretrial discovery of notes made by the police in the course of their investigation, (2) the denial of a specification of particulars with respect to the crimes alleged, (3) the receipt in evidence of testimony concerning analyses made by neutron activation, after denial of pretrial discovery as to whether the State intended to offer such evidence, (4) the destruction before trial of original notes of police officers and of original data compiled by the State's expert witnesses and finally (5) the failure to furnish the defendant with a list of State's witnesses in advance of 24 hours before trial. See RSA 604:1.

All of these factors, it is suggested, combined to deprive the defendant of effective assistance by his counsel and of an opportunity to discover evidence in his favor, in violation of his right to a fair trial as guaranteed to him by the Sixth Amendment to the Constitution of the United States.

The first two factors of which the defendant now complains were considered by this court in response to the State's petition for a writ of prohibition filed March 4, 1965. *State v. Superior Court*, 106 N.H. 228. Following that decision, the Trial Court on April 15, 1965 met with the parties and discussed arrangements by which the defendant's expert should have access to the bullet slugs in the State's custody, and the question of whether

any written statements made by the defendant were to be produced by the State for the defendant's inspection. See *State v. Superior Court, supra*, 231. The prosecution disavowed the existence of any recordings of statements made by the defendant and of written statements signed by him. In accordance with his interpretation of the opinion, the Trial Court did not require the State to produce any notes of recollections by police of conversations with the defendant on January 28, February 2 and February 3, 1964 which were later recorded in police reports.

The defendant accordingly complains in substance of what he considers to be the unduly restrictive effect of the previous opinion (*State v. Superior Court, supra*), setting aside the Trial Court's prior order for "a bill of particulars" pursuant to paragraph 8 of the motion for discovery, and denying his right of access to the "work product of the State."

At the trial it appeared in the course of cross-examination of police officers called by the State that in several instances original notes made by the witness with respect to his investigation had been destroyed after they were embodied in formal reports which were available at the trial. In somewhat similar fashion it appeared that certain recorded data developed by the expert witnesses who testified for the State with respect to neutron activation analysis had been destroyed for lack of storage space, after their salient features had been embodied in other recorded data which were produced by the witnesses.

The record, however, falls short of demonstrating that the defendant was thus in any way deprived of evidence calculated to favor his defense. Our consideration of the arguments advanced does not lead us to depart from the views expressed in *State v. Superior Court, supra*, or to come to the conclusion that the defendant has been deprived of evidence, or opportunities to discover evidence, to which he may rightfully be considered to have been entitled. See *State ex rel Regan v. Superior Court*, 102 N.H. 224, 226, 227. So far as the argument relates to the discovery of the State's purpose to utilize evidence

derived from neutron activation analysis, it appears to us that the State was not required in advance of trial to reach a firm conclusion concerning its use of such evidence at the trial, and that the defendant was not prejudicially deprived of an opportunity to defend against such evidence, since he was in a position to call to the stand at the trial his own expert witnesses who testified adversely to the conclusions advanced by the State in reliance upon the data which it introduced in evidence.

The defendant has suggested no authority supporting his argument that the destruction of a policeman's original notes, the substance of which was produced in different form, operated to violate his rights, and we are aware of none. We do not consider that the failure of the expert witnesses to make or preserve records of their pretrial investigations or experiments is any more violative of the rights of the accused. To the extent that such conduct can operate to affect the weight of a witness' testimony, the defendant in this case had the benefit of its exposure on cross-examination.

In connection with the conference of April 15, 1965 between the court and counsel, the defendant advances the argument that the Trial Court then laid down a ruling which was ignored at the trial, and which should have been enforced to preclude receipt of the testimony of the witness Beaudoin, who testified as an expert on ballistics for the State.

In the course of that conference the Court suggested that if Beaudoin, as a state police officer familiar with the procedures of ballistic investigation, should act as custodian of bullets while they were examined by the defendant's expert, he should not later be permitted to testify "as to what the expert did." We do not consider this to have been a ruling by the Court, but rather an observation made early in the conference which ceased to be significant by the time the conference closed in apparently amicable understanding of the "ground rules" to be followed, so far as it was practical to determine them at that time.

Since no objections to the receipt of testimony by the witness Beaudoin were made by the defendant at the

trial upon the ground of any supposed ruling of April 25, 1965, and the circumstances under which the defendant's expert examined the bullets were fully disclosed to the jury, the defendant's contentions on this point merit no further consideration. *State v. White*, 91 N.H. 109, 114.

We find no merit in the defendant's attack on the provisions of RSA 604:1 requiring that "a list of the witnesses to be used . . . be delivered to [the accused] 24 hours before the trial" The defendant sought to obtain such a list by motion filed May 13, or four days before trial. It has been pointed out that the purpose of such a statute is to inform the defendant what witnesses are to be called to testify against him. *State v. Thorp*, 86 N.H. 501, 505; *Logan v. United States*, 144 U.S. 263, 303-308. Where no surprise results, the omission of a witness' name from the list has been held not to preclude calling the witness. *State v. Williford*, 64 Wash. 2d 787.

The defendant attaches significance to the list in this case, because it bore the names of the experts in the field of neutron activation analysis and the defendant was thus certain for the first time that such evidence would be presented. Earlier notification, it is suggested, "would have permitted a greater opportunity to . . . improve cross-examination and question credibility of the experts," and even might have permitted arrangements for the defendant to conduct similar tests by his own experts.

The statute does not preclude the furnishing of the names of expert witnesses in advance of 24 hours before trial, but the defendant suggests no reason why the State should have been required to commit itself to the calling of the experts on neutron activation analysis further in advance of the trial; and we note that in this case after trial commenced on May 17, ten days elapsed before the drawing of the jury and the view were concluded, and the taking of testimony could commence. We find no basis for holding in this case that compliance with the statute violated the defendant's rights.

Many of the defendant's exceptions relate to matters which do not concern constitutional rights. Shortly before trial, the defendant sought an order which would require the State to elect one of the two Mason indictments upon which it would proceed, and would dismiss the other. The motion was properly denied when made, and when later renewed during the trial. The indictments charged separate crimes, and both were supported by evidence which ultimately warranted their submission to the jury. No convincing reason is advanced for requiring the State to abandon one indictment in favor of the other, and no abuse of discretion appears in the Trial Court's order of denial, since both offenses arose out of the same transaction. 5 Wharton's Criminal Procedure (Anderson, 1957) s. 1938; *State v. Nelson*, 103 N.H. 478, 485. There was no risk present that the verdicts of the jury might be ambiguous, cf. *State v. Lincoln*, 49 N.H. 464, 471.

The offense of kidnapping was one which could be found to have been committed in Hillsborough County. The victim's body was discovered in that County, and in the absence of evidence that the homicide was committed elsewhere, an inference that the crime was also committed there was warranted. *Commonwealth v. Knowlton*, 265 Mass. 382. See *State v. Forbes*, 75 N.H. 306, 307. The defendant's contention that there was a violation of Part I, Article 17 of the New Hampshire Constitution for failure to establish that the homicide took place in Hillsborough County cannot be accepted.

Early in the trial the defendant raised an issue with respect to the Attorney General's opening statement. This objection was revived from time to time, as the defendant sought to keep suggestions of sexual implications from the jury. In recounting the findings at the autopsy, the Attorney General stated that the victim's breasts had been bruised and the "genitalia was extended . . . in a manner not inconsistent with sexual intercourse." Following the opening statement, and again on the following day, the defendant moved to strike these assertions or in the alternative that the court order a mandatory examination under the sexual psycho-

path law, RSA 173:3. The motion was denied subject to exception. It was renewed, and again denied, after evidence was received that "tests were inconclusive for recent or fresh sexual assault" and again at the close of the State's evidence, following testimony that the genitalia showed no evidence of abrasion or contusion.

The motion for an examination under RSA ch. 173 was properly denied. The mandatory provision of the chapter requires such an examination when a person is "arrested and charged with one or more of the following sex offenses: . . . enticing a female child" RSA 173:3 I. The offenses of murder and kidnapping of a minor are not included. The offense referred to by the mandatory section is that established by RSA 579:8 which is specifically captioned "Enticing Female Child," and imposes a penalty for enticing or carrying away for the purpose of prostitution or illicit sexual intercourse. Clearly, this was not the offense with which the defendant stood charged.

The motion to strike was properly denied in view of the evidence that the pathologist who performed the autopsy found multiple contusions and bruises of both breasts and was able to insert two fingers in the opening of the vagina, that the victim's body was found without underclothing or blouse, and that her ski pants were cut open in the area of the crotch. The inferences to be drawn from the evidence could reasonably be said to warrant "the allegations and insinuations" which the defendant claims to have operated to deprive him of a fair trial.

In the course of the trial, the State called as an expert witness Dr. Harold C. Harrison, a consultant in microanalysis and director of a university laboratory for scientific investigation. His testimony related to the matching of particles obtained by vacuumings from the victim's clothing with particles similarly obtained from the clothes or automobile of the defendant. The particles were selected because of visual similarity in color, texture, and hue as seen by microscope. Of some forty sets of particles so selected, in each case comparing particles obtained from the victim with particles obtained from the ac-

cused, the witness concluded that the particles matched in each of twenty-seven of the sets were indistinguishable, and similar in all tests performed. Photographs of these sets were exhibited to the jury. In addition to the visual tests, the matching pairs were subjected to comparative refractive index tests. Paper particles were given a Hirshberg stain test. Finally a solubility test was applied. The witness concluded that each matching set was an independent subject from each other matching set, and that by the law of statistical probabilities the victim's clothing, which was the source of one particle in each set, had been in contact with the defendant's clothing or automobile, the sources of the second particle of each set.

We are of the opinion that this evidence was properly received. The fact that the only tests applied to determine that there was no duplication in the 27 matching sets were the tests of color, texture, and hue, did not make the evidence incompetent, but went to its weight. *State v. LaFountain*, 108 N.H. 219, 221. In expressing his conclusion based upon statistical probabilities, the witness relied upon previous studies made by him, indicating that the probability of finding similar particles in sweepings from a series of automobiles was one in ten. Applying this as a standard, he determined that the probability of finding 27 similar particles in sweepings from independent sources would be only one in ten to the 27th power. See *People v. Collins*, 66 Cal. Rptr. 497, 500, footnote 8; *State v. Sneed*, 76 N.M. 349. Hence he concluded that there was a mathematical probability that the similar particles taken from the belongings of the victim and of the accused respectively, had a common origin which established physical contact between them.

While the evidence for the defense tended to show that the tests employed by the State's expert were neither discriminatory nor conclusive, and the expert himself conceded that all twenty-seven sets of particles may not have been wholly independent of each other, these considerations went to the weight of the testimony rather than its admissibility. A similar question arose concerning the significance of the results of tests of particles

made by means of neutron activation analysis. Much time at the trial was devoted to consideration of the admissibility of evidence derived from such tests. To determine this question, the Court in the absence of the jury received expert testimony concerning the nature of the analysis, the methods by which the witnesses conducted it, and the extent to which the results of such processes have gained scientific recognition.

In his opening statement to the jury, the State's Attorney General had outlined at some length the nature of the scientific evidence which the State proposed to offer, including evidence that it had been determined by means of neutron activation analysis that hair found upon the victim's body and clothing corresponded with hair obtained from the defendant's pubic region. The State called as an expert witness C. Michael Hoffman, an employee of the United States Treasury Department, experienced in the examination of physical evidence by neutron activation analysis. The witness gave a general description of the method by which such an analysis is made and tendered his report of the analysis of hairs, and of particles submitted to him by the State in this case. The Trial Court thereupon conducted an extended hearing, out of the presence of the jury, for the purpose of determining the extent to which the results of such analyses have gained scientific recognition and acceptance in order to rule upon admissibility of the proffered evidence. *Frye v. United States*, 293 Fed. 1013, 1014.

The hearing consisted of the testimony of experts called by both parties. It disclosed that the procedures involved were essentially those described in Watkins, *Identification of Substances by Neutron Activation Analysis*, 15 Am. Jur. Proof of Facts, Ann., 115 et seq. (1964). The process, as there stated, "is essentially one whereby the material to be analyzed is first made radioactive . . . so that it will give off or emit radiation in the form of gamma rays. This radioactive sample is then exposed to a scintillation crystal; and every time a gamma ray from the [sample] interacts with the crystal, it emits a flash of light, which is converted into an electrical pulse whose voltage is proportional to the

energy of the gamma rays. An electronic device . . . then sorts the electrical impulses into different energy groups and adds up the pulses in each group. The result is a graph shown on an oscilloscope screen The graph contains information related to the kind and amount of elements in the radioactive sample and can be transcribed immediately or stored on magnetic tape or punched paper tapes for future reference." *Id.* 116-118.

The hearing by the Court without the jury resulted in a ruling excluding the evidence with respect to tests made upon samples of hair, but admitting evidence with respect to comparative tests of the particles vacuumed from clothing of the victim, on the one hand, and from clothing of the defendant and from his car, on the other hand. The Court found that the hair-identification tests had been conducted by the State's experts in reliance upon prior work in which an expert called by the defendant was the "principal worker in the field," that his methods differed materially from those utilized by the experts for the State, and that the evidence on hair-identification offered by the State would not be acceptable to scientists in the field. See *State v. Holt*, 17 Ohio St. 2d — (March 26, 1969).

The Court ruled however that "the evidence with reference to particles stands upon somewhat of a different basis" since unlike the evidence with respect to hair analysis, this evidence was not presented as being "as infallible as that of fingerprints." *Cf. People v. King*, 72 Cal. Repr. 478. The Court found: "Here it is understood there is no attempt at identification by comparison of the particles involved. That all . . . this evidence purports to show is a similarity of the particles based upon a qualitative and somewhat quantitative examination of the particles by neutron activation." Subject to the defendant's exception the evidence with respect to analysis of the particles was presented before the jury.

The testimony upon this score disclosed that some forty samples of particles were visually selected for analysis, based upon similarity of appearance under a microscope. Of the particles so selected and subjected to

nuclear testing, four sets, (each consisting of particles obtained from the victim on the one hand and from the accused on the other), were found to have various chemical elements in common and in such comparable abundance as to warrant testimony by the expert that the particles in each set had a common origin or source, although each set differed in composition from the other.

In support of his exception to receipt of this evidence, the defendant argues first, that neutron activation analysis was not shown to have gained general acceptance in the scientific profession, at least for purposes of matching "unknown particles," secondly, that the "technique actually used" did not follow the technique generally accepted by the profession, and finally, that the evidence of similarity was insufficient to support the witness' conclusion of common origin, or to permit a like inference by the jury.

We are not disposed to hold the evidence inadmissible for the reasons advanced. A close examination of the arguments in support of the defendant's contentions indicates that all are based upon the central theme that in the absence of scientific studies of "known" substances serving as a control to indicate the prerequisites to a conclusion of common origin, the evidence of similarity disclosed by the tests of "unknown" substances received in evidence is not entitled to the probative effect assigned to it by the State's witnesses. In the language of the defendant's brief and argument, his contention is that it was error to receive the results of the analysis "without requiring that the State establish a foundation for conclusions as to the significance of trace elements of particles," by showing the frequency with which they occur in the same relative combinations in the "general population of particles."

The parties are in agreement that in order for the results of scientific tests to be admissible in evidence, the scientific principle involved "must be sufficiently established to have gained general acceptance in the particular field in which it belongs." *Frye v. United States*, 293 Fed. 1013, 1014, *supra*. See *People v. Williams*, 164 Cal. App. 2d Supp. 858; *State v. LaForest*, 106 N.H. 159,

160. The subject is discussed in Conrad, *Modern Trial Evidence* (1956) s. 212, (1966 supp); Richardson, *Modern Scientific Evidence* (1961) ss. 6.3, 6.16; Wigmore, *The Science of Judicial Proof* (3d ed.) (1937) s. 220, p. 450; and 3 Wigmore, *Evidence* (3d ed.) s. 795.

The Trial Court properly applied this principle in excluding the evidence relating to hair identification, in view of the testimony of the defendant's expert, Dr. Robert E. Jervis, a recognized pioneer in this new field. The testimony concerning the analysis of particles however did not purport to attribute to the conclusions reached the same infallibility which the excluded evidence had been claimed to have. The Court could properly find that the tests of particles produced an accurate analysis of the chemical elements which they contained, by means of procedures sufficiently accepted by scientists familiar with this limited field. See *State v. Roberts*, 102 N.H. 414; *State v. Reenstierna*, 101 N.H. 286.

The fact that the defendant's expert testified that he would have subjected the particles to longer periods of radiation, and required a more absolute qualitative testing, went to the weight of the evidence received rather than its admissibility. *State v. LaFountain*, 108 N.H. 219, 221, *supra*.

The probative significance of the results of the analysis was a matter for expert opinion. The State's witness Hoffman had conducted extensive tests upon "unknown" paint samples, and participated in other testing programs. He was of the opinion, as to four different sets of matching substances each of which was found to have common elements in comparable relative abundance, that each set came from a common source, or origin although found in different places. The defendant's expert entertained a contrary view of the significance of the findings. The issue so presented was one which was properly submitted to the jury for decision. *State v. Thorp*, 86 N.H. 501, 507. Essentially, as in the case of Dr. Harrison's matching tests, the issue involved the "mathematical theory of probabilities." See Wigmore, *Evidence*, (3d ed.) s. 414 p. 389; *People v. Collins*, 66 Cal. Repr. 497, 500, *supra*; *State v. Sneed*, 76 N.M. 349, *supra*. We can-

not hold that the testimony of either Hoffman or Harrison was irrelevant or incompetent as a matter of law.

These indictments were tried against the backdrop of the pending Valade indictments. On *voir dire*, the defendant agreed that the Valade case should be mentioned to prospective jurors. In cross-examination of the State's ballistic experts, the defense adduced testimony that in their opinion the Valade bullets, obtained by autopsy in February 1960, resembled test bullets fired from the Mossberg rifle in evidence or that they were in fact fired by that weapon. This examination was permitted over the objection that it might result in mistrial, after a ruling by the Trial Court that it was "clearly understood that the defense assumes the risk of this line of questioning."

After the State had rested, the defendant took the stand, and testified that he first acquired the rifle in evidence by shipment from the Mossberg Company in December 1961. The prosecution then informed the Court that as of the preceding afternoon they had received information indicating that this was so, and that as a result the Valade bullets had been examined at the State's request by a Massachusetts expert named Collins, who had given the opinion that the Valade bullets were not fired by the weapon in evidence. On Saturday, June 19, 1965, the witness Collins was called by the defense, and so testified. At the request of the State, the Mason bullets were delivered to Collins on the afternoon of June 18, 1965 for examination over the week-end. On Monday June 19, State's counsel informed the Court that Collins was unable in the time available to reach a conclusion as to whether or not the Mason bullets were fired by the weapon in evidence, but had suggested that it would be "serious error" to dismiss the indictments in the Mason cases. Collins declined to pursue his investigation of the Mason bullets further, in view of the advanced status of the trial.

In the course of discussion with court and counsel, the prosecution disclosed that certain aspects of Collins' report on the Mason bullets might be considered favorable to the defendant, and other aspects favorable to the State

but that on the whole it was merely "cumulative." No further disclosure was required by the Court, and none was formally sought by the defendant.

The trial resumed and examination of the defendant continued. The State examined him concerning his previous ownership of a handgun of a type which might have fired the Valade bullets, the defendant having previously made the statement that he had owned but lost such a gun before February 1960. After the defendant's evidence was closed, the Court ruled that the State would not be permitted to present evidence contradicting the defendant's testimony concerning handguns, and instructed the jury that it was "ruled out . . . on the ground that it's a collateral issue." The instructions continued: "Since you're only concerned with the rifle in evidence, and it's a collateral issue . . . that's the end of it." The defendant later moved to strike the testimony concerning other guns, and his motion was denied upon the ground that the jury had been instructed to "disregard the evidence as far as a particular issue in this case."

Following the charge to the jury the defendant for the first time suggested that the Court should have instructed the jury that it "must first find that this Mossberg weapon was used to kill her" and that "this knife is not the murder weapon." After the verdicts the defendant moved to set the verdicts aside, alleging among other grounds that his constitutional rights had been violated by the State's failure "to disclose all evidence favorable to the defendant." In support of this motion an affidavit of counsel was filed, relating conversations with the witness Collins on July 14 and August 2, 1965, but stating that Collins had made "no substantial examination of the Mason bullets after attending the trial." The State moved to strike the affidavit, filing with its motion copy of the letter from Collins to defense counsel dated August 3, 1965 and referred to in the affidavit of counsel, in which Collins declined to furnish the defense with an affidavit, and reiterated his inability to "formulate any definite conclusion" with respect to the Mason bullet, or to add to his testimony at the trial. On the

basis of this letter, the affidavit of counsel was ordered stricken from the record. The defendant thereafter moved for leave to take the witness Collins' deposition, which was likewise denied.

The defendant contends that as a result of what occurred at the trial the jury was permitted to speculate that the defendant shot Pamela Mason with some weapon other than the Mossberg rifle in evidence, and that his constitutional rights were thereby violated. The argument appears to disregard the instruction to the jury given at the close of the evidence, that the jury was "only concerned with the rifle in evidence." If the defendant considered this instruction insufficient to overcome the risk of misuse of the evidence regarding other guns, received primarily upon the issue of the defendant's credibility, it was open to him to request additional instructions, which he failed to do. The instruction given was not so plainly inadequate as to result in prejudice to the defendant's rights. See *Frazier v. Cupp*; *supra*. Moreover in submitting the cases to the jury the Court read to them the indictment charging murder with "a Mossberg 22 calibre rifle Palomino model 400 SLLR."

As the State has pointed out, the Valade bullets came to play a part in the trial as a result of the defendant's examination of the plaintiff's experts with respect to them. Confident of his ability to establish that he did not own the Mossberg rifle at the time of the Valade crime, he pursued this course under the ruling that "the defense assumes the risk of this line of questioning." One of these risks was that the State would seek to overcome a possible inference that the defendant was innocent of the crime charged by the Valade indictment. Its effort to present testimony concerning his possession of handguns was properly cut off by the ruling of the Trial Court. *State v. Prevost*, 105 N.H. 90. If any prejudice could have resulted to the defendant from what transpired, it arose from calculated risk which he shouldered early in the trial. Having enjoyed the advantage of his stratagem, he cannot now be relieved of incidental burdens.

In the orders striking the affidavit of defendant's counsel and denying the motion for leave to take the deposition of the witness Collins we perceive no error. Defendant's counsel had full access to the witness during the trial and could have offered any further testimony by him which they considered essential. The record suggests no material evidence withheld by the prosecution. On the contrary the witness Collins' opinion concerning the Valade bullets was voluntarily revealed to the defense by the prosecution. There is nothing in the record to suggest that the witness would have given any opinion concerning the Mason bullets which differed from what he had said at the trial. The affidavit of counsel filed in August, expressly stated that he had "performed no substantial examination of the Mason bullets" since the trial.

We have fully examined and considered at length the contentions advanced by the defendant's voluminous brief and the oral arguments of his diligent counsel. We find no cause to vacate the verdicts of the jury.

Exceptions overruled.

GRIFFITH, J., did not sit; the others concurred.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

GEORGE O. SHO VAN
Clerk of Court and
Reporter of Decisions

CONCORD, N. H.

1969

July 30

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Alexander J. Kalinski, Esquire
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Re: 5514 State v. Coolidge

Gentlemen:

The Court on July 30, 1969 denied the defendant's motion for rehearing and modified the opinion as follows:

Strike out the fourth full paragraph on page 9 of the multilith opinion and add the following sentence at the end of the previous paragraph:

The circumstances under which the defendant's expert examined the bullets were fully disclosed to the jury and the defendant's contentions on this point merit no further consideration.

Very truly yours,

/s/ George O. Shovan

GOS:mnw

cc: Clerk, Hillsborough County Superior Court

SUPREME COURT OF THE UNITED STATES

No. 1318 Misc., October Term, 1969

EDWARD H. COOLIDGE, JR., PETITIONER

v.

NEW HAMPSHIRE

On petition for writ of Certiorari to the Supreme Court of the State of New Hampshire.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1756 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 29, 1970

FILE COPY

SEP 14 1970

E. ROBERT SEEVER, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

PETITION NOT PRINTED

No. 323

RESPONSE NOT PRINTED

BRIEF NOT PRINTED

EDWARD H. COOLIDGE, JR.,

Petitioner,

v.

THE STATE OF NEW HAMPSHIRE,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF NEW HAMPSHIRE

BRIEF FOR PETITIONER

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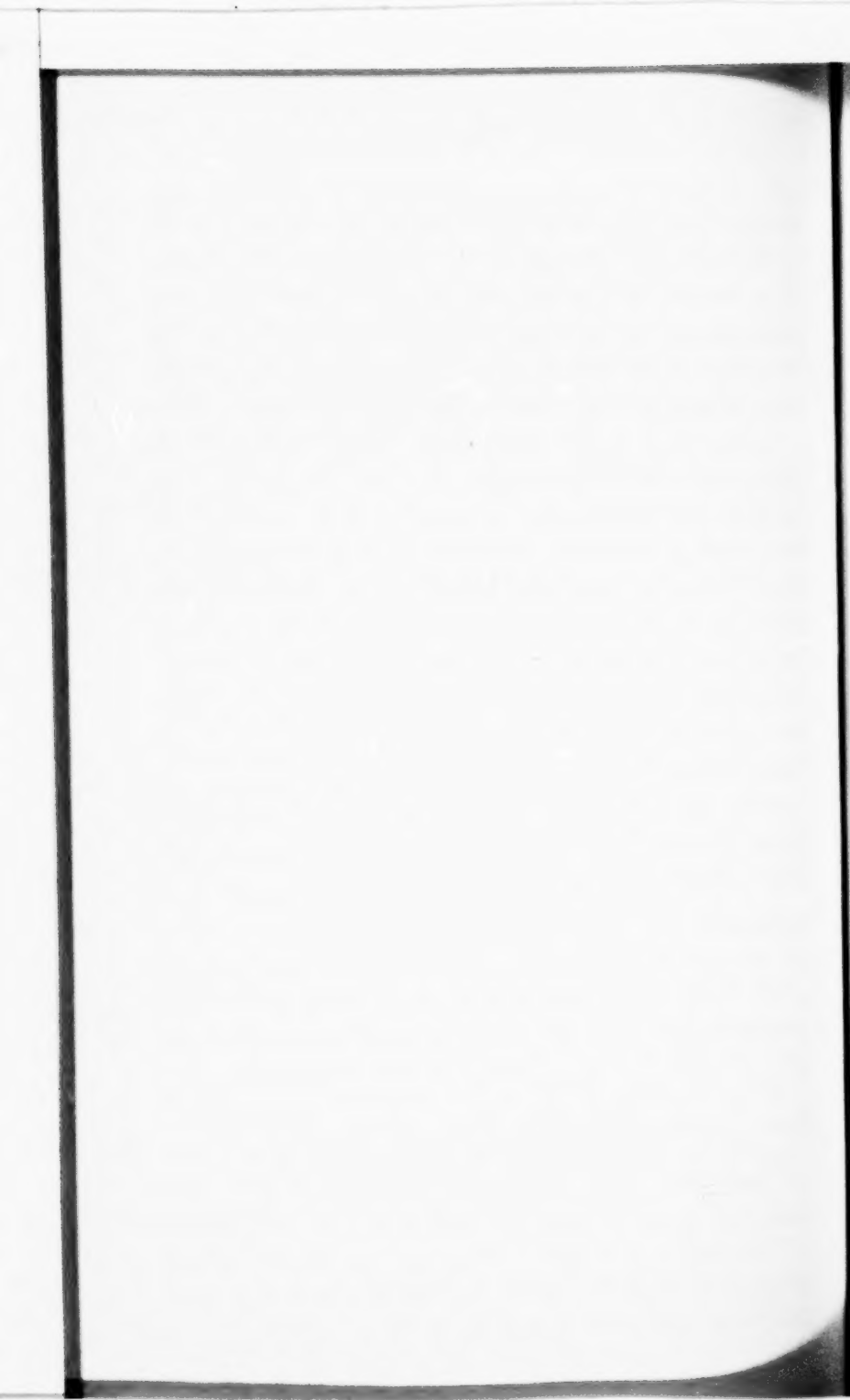
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IN THE
IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 323

EDWARD H. COOLIDGE, JR.,

Petitioner,

v.

THE STATE OF NEW HAMPSHIRE,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF NEW HAMPSHIRE

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of New Hampshire affirming the conviction of petitioner of first degree murder (App. 262-286) is reported 109 N.H. 403, 260A2d 547. Earlier opinions denying motions to suppress evidence obtained by unlawful search and seizure and for pre-trial discovery (App. 205, 207) are reported 106 N.H. 186, 208 A2d 322 and 106 N.H. 229, 208 A2d 832.

JURISDICTION

The judgment of the Supreme Court of New Hampshire was entered on June 30, 1969 (App. 262).¹ A timely motion for rehearing was denied, with a minor amendment to the opinion, on July 30, 1969 (App. 287-288). By order of Mr. Justice Brennan dated October 10, 1969, the time for filing a petition for certiorari was extended to and including November 26, 1969. The petition was filed on November 22, 1969 and granted upon June 29, 1970 (App. 289).

The jurisdiction of this Court is based upon 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether a search warrant issued by the State Attorney General upon the unsworn reports of his subordinates while he is in active charge of the investigation and prosecution of a highly-publicized murder satisfies the requirements of the Fourth and Fourteenth Amendments.

2. Whether a wife's acquiescence in the search and seizure of her husband's guns and clothing, while he is in custody, validates a search and seizure otherwise violating the Fourth and Fourteenth Amendments.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or af-

¹Under New Hampshire practice the opinion of the Supreme Court ending in the notations "exceptions overruled", along with the denial of the motion for rehearing, constitutes the judgment.

firmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment 14

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

Petitioner was convicted of murder in the Superior Court of Hillsborough County, New Hampshire (App. 259-260). Petitioner's exceptions were overruled on appeal (App. 262-286). The questions presented are best understood after a brief chronology of events.

Pamela Mason, a 14 year-old girl, left her home in Manchester, New Hampshire, about 6:00 p.m. on January 13, 1964, during a heavy snow storm, apparently in response to a man's telephone call for a babysitter. She disappeared for eight days. On January 21, 1964, her body was found on the west side of Interstate Highway 93, a modern, high-speed highway with an open median strip running south to eastern Massachusetts cities. She had died from gunshot and knife wounds, probably about two to four hours after her last meal. (App. 262-266.)

The State's theory was that the decedent had been killed with a .22 caliber Mossberg rifle and her body thrown or left by the highway sometime around 9:00 p.m. on January 13. The body was not discovered until after a rain storm on January 20-21 melted the snow. (App. 265-266.)

The case stirred wide publicity approaching hysteria, especially because an unsolved kidnapping and murder of another young girl, Sandra Valade, had occurred in Manchester four years before. New Hampshire's Attorney General William Maynard took active charge of the investigation and any subsequent prosecution (App. 61-62, 188, 203). The police appealed to the public via newspaper and radio for reports of any persons who were out that night.

On January 28, having learned from a neighbor that petitioner was out of his house, two police officers went to petitioner's residence and questioned him about his activities on the evening of Pamela Mason's disappearance. Coolidge showed the officers his guns. (App. 111-112.) The officers inspected his automobiles, both registered in his own name (App. 178-179, 186, 188). As they left, one of the officers asked Coolidge whether he would be willing to take a lie detector test. Coolidge replied that Sunday was a preferable date. Mrs. Coolidge was present off and on during the interview (App. 100, 112).

On Sunday, February 2, 1964, Coolidge was called to the Manchester Police Station to arrange a lie detector test (App. 112). For about two hours, Manchester police officers tried to persuade him to take the test (App. 26-27). About 3:00 or 3:30 p.m. two officers who were strangers to Mrs. Coolidge picked her up at the Coolidge home and took her to the police station where she talked briefly with her husband (App. 91).

As Mrs. Coolidge was leaving the station, she was approached by Captain Stips, who was in charge of the investigation into the Mason murder. Captain Stips questioned Mrs. Coolidge about her conversation with her husband and then about her husband's involvement in the Mason murder. Captain Stips then asked Mrs. Coolidge whether she and her husband were "compatible". He urged her to "cooperate with the police", and said that if she "withheld any information he could give me a prison sentence". (App. 70-71, 92, 200.) Mrs. Coolidge was so upset by the questioning that she "could just barely drive home" (App. 92).

Coolidge himself was taken to State Police Headquarters in Concord, New Hampshire for the lie detector test. The test proved inconclusive but, while it was in progress, Coolidge admitted embezzling money from his employer (App. 185). On the way back to Manchester petitioner was warned of his rights, and the police decided to hold him in custody (App. 29, 66, 185). He was then interrogated until about 2:30 or 3:00 a.m. the next morning with only an hour's interruption (App. 30-31). He steadfastly denied involvement in the Mason crime but gave a number of conflicting explanations (Transcript of Trial, vol. 5, pp. 4-6, 18, 66, 74-78).

About 10:30 p.m. that same evening, while petitioner was held at the Manchester police station, the Manchester police decided once again to question Mrs. Coolidge. Detective Sergeant McBain of the New Hampshire State Police and Inspector Glennon of the Manchester Police Department went to the Coolidge home (App. 33), title to which was held by petitioner (App. 21-22). Mrs. Edward Coolidge, Sr., petitioner's mother, was present and also Maria, the couple's minor daughter. The police officers instructed Mrs. Coolidge, Sr. to leave the house (App. 110). Once they had Mrs. Coolidge alone, the police officers told her that her husband was "in serious trouble" and would not be home that night (App. 93). They then quizzed her about her husband's whereabouts on the night of the Mason murder and asked whether her husband had any firearms (App. 93). Mrs. Coolidge said yes. She went into the bedroom, followed by the police officers without invitation (App. 94). The firearms were in a bedroom closet (App. 94). Mrs. Coolidge took the weapons from the closet (App. 94). The officers then asked whether or not the clothes worn by petitioner on the night of January 13, 1964 were available. Mrs. Coolidge pointed out some of the clothes which her husband might have been wearing that night. (App. 94-95.) The officers took two shot guns, a Marlin rifle and a Mossberg rifle, some trousers and a jacket from the house, giving a receipt for the items (App. 175). On the way out

they told Mrs. Coolidge that they wished to inspect petitioner's two cars. She neither objected nor assented but, supposing herself to have no choice, gave the police officers the keys to the cars (App. 186-187, 197). Mrs. Coolidge remained in the house. After a search the police officers took a pair of trousers, a wool cap, a coat hanger, a glove, a paring knife and a box of bullets (App. 173-174). They, like the guns, trousers and jacket taken from the house, were petitioner's personal property, as distinguished from common household goods. Petitioner had not authorized his wife to show or give them to the police or to dispose of them in any way (App. 189, 198).

Petitioner first challenged the constitutionality of this search and seizure under the Fourth and Fourteenth Amendments by a motion for a return of the articles and suppression of any resulting evidence (App. 5). The Superior Court, after a hearing, found that, at the time the police officers were in the Coolidge home, "Mrs. Coolidge fully intended to cooperate with the police in every way and to furnish them freely with both information and guns in order, as she stated, to clear her husband of any suspicion" (App. 186-187, 201). The Trial Court also found, however, that "Mrs. Coolidge, Jr. is an extremely thin, nervous woman at present time, (August 31 and September 1, 1964) and that, assuming her condition is not greatly dissimilar today than it was then (February 2, 1964), she would have been more nervous than a normal person of her age would have been" (App. 187, 196). And the court specifically found that "Mrs. Coolidge had no knowledge of any constitutional rights, either by explanation of the police or otherwise, to deny the police the right to examine these [articles]" (App. 186-187, 201).

The finding must be read in the light of her testimony (App. 94):

Q. And did they tell you that you didn't have to give them these weapons unless you wanted to?

A. No; I felt that I had to.

The Superior Court then transferred the case to the State Supreme Court without a ruling (App. 205). The Supreme Court, explicitly noting that questions were raised under the Fourth and Fourteenth Amendments, denied the motion upon the grounds that there was no search and seizure in the house and that, so far as the automobiles were concerned, the wife's consent made it reasonable to search for and seize the personal possessions of the husband (App. 210-220).

At the trial the Mossberg rifle, the clothes and vacuum sweepings from the clothes seized in the house² were received in evidence over petitioner's objection explicitly invoking the Fourth and Fourteenth Amendments (App. 227, 228, 230). The State's theory was that the Mossberg rifle was the gun which shot the Mason girl, thus linking petitioner and the crime (App. 266). Petitioner's jacket and pants, and vacuum sweepings taken from them, were submitted to the jury on the theory that they established an additional link between the petitioner and the crime (App. 267). The exceptions were preserved and argued on appeal, but the State Supreme Court adhered to its prior ruling (App. 267-268).

A second search and seizure occurred on February 21, 1964, while petitioner was in custody, this time without either his or his wife's consent (App. 84, 225). On February 19 - two days earlier - the Manchester Police Chief, and two investigating officers, the Colonel of the State Police and two State Police captains, and two Assistant Attorneys General had conferred with New Hampshire Attorney General William Maynard in his office to review and plan the future course of the investigation (App. 236-240). This meeting was the latest in a series of meetings on the case between Attorney General Maynard and the Chief of the Manchester Police. The direction of the investigation had come chiefly from the office of the Attorney General.

²No items taken from the automobiles on the night of February 2 were offered in evidence.

The meeting focussed upon the evidence that had been gathered concerning petitioner (App. 236-237). At its conclusion, Chief McGranaghan requested an arrest warrant charging the petitioner with the murder of Pamela Mason (App. 239), and four search warrants authorizing the search of the Coolidge home, a laundromat, the Coolidge 1951 Pontiac and the Coolidge 1963 Chevrolet (App. 239-240). The formal applications for the warrants were made under oath but they contained only conclusory averments of probable cause (Defts. Exh. A-D, App. 133-164). None of the factual information presented to the Attorney General was under oath (App. 248-251). No record was made with regard to any of the information presented. No affidavit or other sworn testimony was presented. (App. 80.)

Attorney General Maynard took Chief McGranaghan's oath as a Justice of the Peace (App. 188, 251). Attorney General Maynard then issued the only search warrants, even though he was in charge of the investigation and would later be the Chief Prosecutor at the trial.

That night, several hours after petitioner had been arrested, the police impounded his two automobiles and towed them to the Manchester Police Garage (App. 77-73, 256-257). The 1963 Chevrolet automobile was searched on February 21, 1964 (App. 257). Deputy Police Chief Leavitt and Roger Beaudoin, a State Police Laboratory Technician, searched and vacuumed the 1951 Pontiac automobile for the first time on the afternoon of February 21, 1964 (App. 255). The materials removed were sent to the University of Rhode Island laboratories on February 24, 1964 (App. 255). The Pontiac was searched and microscopic sweepings were removed a second time on January 4, 1965, and again on April 10, 1965 (App. 258).

Before trial petitioner moved for return of the property and suppression of any evidence upon the ground that the warrant was invalid under the Fourth and Fourteenth Amendments because it was not issued by an impartial magistrate and because there was no showing of probable

cause (App. 5-6, 192-193: Defendant's Memorandum of Law in Support of Motion to Quash pp. 2, 3-5, 5-7). The Superior Court transferred the cause to the Supreme Court of New Hampshire (App. 205-206), which denied the motion to suppress, specifically ruling that there was no violation of rights under the Fourth and Fourteenth Amendments (App. 210, 220-225).

The articles seized under the warrant had critical importance at the trial because the State, having no direct evidence of guilt, sought to prove physical association between the decedent and petitioner's automobile by showing substantial similarity between the particles of matter taken from the decedent's clothes and, by the vacuuming, from petitioner's automobile (App. 265). Petitioner objected to admission of this evidence upon numerous grounds, including the constitutional grounds raised by the motion to suppress (App. 227, 228-229, 230, 254-255, 259). Exceptions were saved and the constitutional issues argued on appeal, but the State Supreme Court adhered to its prior ruling (App. 269-270).

On the appeal after verdict the Supreme Court of New Hampshire, although it found enough evidence to let the jury's verdict stand, also observed (App. 265, 266, 267) -

The proof, however, was not wholly free from weaknesses. * * *

The limitations of time served to cast doubt upon the likelihood that the State was correct in its theory that the crimes had been committed in a space of three and one-half hours of extremely stormy weather. Further doubts were cast by evidence * * *

In the field of ballistics the credibility of the State's evidence was strained by events which transpired at the trial. * * *

The evidence concerning matching particles was arguably inclusive on the issue of probability. * * *

SUMMARY OF ARGUMENT

I.

The admission into evidence of articles taken from petitioner's automobile on and after February 21, 1970 violated his constitutional rights under the Fourth and Fourteenth Amendments because the search and seizure took place under search warrants that did not meet constitutional requirements. The warrants were invalid for two independently sufficient reasons.

First, the search warrants were not issued by a "neutral and detached magistrate", as required by the Constitution, but "by the officer engaged in the often-competitive enterprise of ferreting out crime". *Mancusi v. DeForte*, 392 U.S. 364, 371. The search warrants were issued by William Maynard, the Attorney General of New Hampshire. Mr. Maynard was in active charge of the investigation into a highly-publicized crime. He would later lead the prosecution. Holding a separate commission as Justice of the Peace was insufficient, under these circumstances, to make him either neutral or detached. Cf. *Tumey v. Ohio*, 273 U.S. 510; *In Re Murchison*, 349 U.S. 133.

Second, the only affidavit, which came from the Chief of Police, stated no facts from which an independent magistrate could make his own determination upon the question of probable cause. The additional information orally furnished by investigators working under Attorney General Maynard's direction was not supplied "by oath or affirmation" as required by the Fourth and Fourteenth Amendments. On this aspect of the case, therefore, reversal would be required by *Aguilar v. Texas*, 378 U.S. 108, even if the search warrants issued by the Chief Prosecutor could otherwise be sustained.

II.

The admission into evidence of the Mossberg rifle and clothing seized in petitioner's bedroom on February 2, 1964 also violated his rights under the Fourth and Fourteenth Amendments. Upon that occasion the police had no warrant. Petitioner was in custody, and there was no emergency dispensing with the normal requirement of a warrant.

Neither Mrs. Coolidge's willingness to admit the police officers to the Coolidge home nor her acquiescence in their following her into the bedroom and seizing the guns and clothing validated the officers' action. The policy of the Fourth Amendment is to afford the individual both personal privacy against official intrusion and personal security against unauthorized prying designed to secure information with which to fortify the coercive power of the State. The guns and clothes were petitioner's personal belongings. The police officers did not come upon them during the period in which they were sitting in the living room or kitchen obtaining the testimony of Mrs. Coolidge. *Cf. Frazier v. Cupp*, 394 U.S. 731. Whatever the officers' license to come into the house to question her about her knowledge, when they followed Mrs. Coolidge into the bedroom, it was petitioner's guns that they were after; it was only he against whom they were seeking evidence. Mrs. Coolidge was involved at this juncture only as the officers might use her to obtain petitioner's private belongings - or acquiesce in their taking them - without obtaining either his permission or a proper warrant.

Since the rights of privacy and security against unauthorized official intrusion are personal, a third person cannot waive them unless authorized by the principal to act as his agent. *Stoner v. California*, 376 U.S. 483, 489. Petitioner gave his wife no authority to make decisions affecting his constitutional rights. Since he was readily available, there was no emergency requiring someone to act for him in his absence. Nor does a wife have such authority merely by virtue of her marital status; the law gives her no power to

dispose of her husband's property, much less his constitutional rights.

To say that the wife's assent to seizure of her husband's personal belongings while he is in custody is alone enough to make "reasonable" an otherwise unconstitutional search and seizure is to put constitutional guarantees at the whim of whatever fear, anger, selfishness, vagary or misunderstanding the pressure of an official intrusion may put upon his wife. The sole effect of adopting such a rule, in situations where the husband himself could be asked, is to substitute the chance of the wife's decision for a magistrate's ruling upon probable cause.

ARGUMENT

I.

THE WARRANT FOR THE SEARCH AND SEIZURE OF PETITIONER'S AUTOMOBILES DID NOT SATISFY THE FOURTH AND FOURTEENTH AMENDMENTS.

The search and seizure of petitioner's two automobiles on February 21, 1964 under search warrants issued by the Attorney General of New Hampshire as a Justice of the Peace violated the Fourth and Fourteenth Amendments for two reasons: *first*, the Attorney General, while actively engaged in a criminal investigation looking towards a prosecution which he will personally conduct, is not the "neutral and detached magistrate" required by the Fourth and Fourteenth Amendments; *second*, the warrant was issued upon unsworn reports and a conclusory affidavit instead of upon oath or affirmation sufficient for a magistrate to make his own finding of probable cause. Either defect alone is enough to vitiate the warrant and render the search and seizure unlawful. Consequently, the admission of articles seized under the warrant as evidence of guilt denied petitioner a constitutional trial. *Mapp v. Ohio*, 367 U.S. 643.

1. A search warrant is valid under the Fourth Amendment only if issued by a "neutral and detached magistrate". *Mancusi v. DeForte*, 392 U.S. 364, 371. The principle has been repeatedly affirmed in the opinions of this Court. *Johnson v. United States*, 333 U.S. 10, 14; *Giordenello v. United States*, 357 U.S. 480, 486; *Aguilar v. Texas*, 378 U.S. 108, 114-115.

In *Mancusi v. DeForte*, *supra*, State officers searched the office of a labor union official and seized certain union records after the union had refused to comply with a subpoena duces tecum issued by the District Attorney. Later the records were admitted in evidence against the individual official while he was on trial upon an indictment for conspiracy and extortion. After holding that the individual official had standing to challenge the search of the office, this Court ruled that, even if the subpoena duces tecum were treated as a warrant, it "could not in any event qualify as a valid search warrant under the Fourth Amendment, for it was issued by the District Attorney himself, and thus omitted the indispensable condition that 'the inferences from the facts which lead to the complaint "... be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Johnson v. United States*, 333 U.S. 10, 14.' *Giordenello v. United States*, 357 U.S. 480, 486." 392 U.S. at 371.

Mancusi v. DeForte, *supra*, governs the instant case. The only difference is that where the prosecutor in that case held only one commission, William Maynard, the prosecutor who signed the warrant in this case, held commissions as both Attorney General and Justice of the Peace.

This purely formal circumstance is constitutionally irrelevant. Holding a commission as Justice of the Peace was not enough to make Mr. Maynard "neutral" or "detached". He was nonetheless the chief prosecutor both in law and in fact. He was still "the officer engaged in the often competitive enterprise of ferreting out crime." *Cf. Tumey v. Ohio*, 273 U.S. 510; *In Re Murchison*, 349 U.S. 133.

The record puts these characterizations beyond dispute. Attorney General Maynard was in active charge of investigating the crime of which the petitioner was accused (App. 251). For days the crime and ensuing investigation were headline news. Attorney General Maynard was constantly questioned by the press. The banner headline in the *Manchester Union Leader* for February 16 - four days before he signed the warrant - read "MAYNARD HAS SUSPECT". He had issued statements promising ruthless investigation. Later, he would lead the prosecution (App. 228). The warrants were issued after a meeting held by him in his own office as the senior official responsible for the progress of the investigation. It is irrelevant that he held a commission as a Justice of the Peace and signed the warrants in that capacity.³ Plainly, a prosecutor cannot, merely by taking off one hat and putting on another, become a neutral and detached judicial officer unaffected by the external and internal pressures arising out of his involvement in the investigation and prosecution of the same crime. The trial judge put the point succinctly (App. 254) -

I found that an impartial magistrate would have done the same thing as you did. I don't think, in all sincerity, that I would expect that you could wear two pairs of shoes.

The court below ignored the principles stated in *Mancusi* and *Johnson*, apparently reasoning that under *Ker v. California*, 374 U.S. 23, the federal requirement of an impartial magistrate does not apply to the States. The holding is squarely opposed to this Court's decision in *Mancusi*, which was a Fourteenth Amendment case. The reasoning also misapplies the *Ker* opinion. The prevailing opinion in *Ker* distinguished "between evidence held inadmissible because of our supervisory powers over federal courts and that held in-

³Under New Hampshire law the functions of a justice of the peace were limited to issuing warrants, performing marriage ceremonies, and taking acknowledgments. New Hampshire RSA 595:1, 592-A:5, 456:4, 457:31.

admissible because prohibited by the United States Constitution" (*id.* at 33) but the opinion of the Court and all the separate opinions⁴ declare that the admissibility of evidence obtained by search and seizure in State proceedings is to be determined by what the Court described as "the 'fundamental criteria' laid down by the Fourth Amendment and in the opinions of this Court applying that Amendment" (*ibid.*).

The requirement that the existence of probable cause be determined by a neutral and detached magistrate is one of those "fundamental criteria". Its absence invalidated the search and seizure, and required exclusion of the evidence seized.

2. The search warrant had a second fatal fact: the affidavit of the Manchester Chief of Police was wholly conclusory and therefore insufficient for a finding of probable cause. Under the Fourth Amendment the sworn evidence must give the "neutral and detached magistrate" sufficient basis to "judge for himself the persuasiveness of the facts relied on by a complaining officer to show probable cause." *Giordenello v. United States*, 357 U.S. 480, 486. See also *Nathanson v. United States*, 290 U.S. 41. Under the Fourteenth Amendment the same rule is applicable to the States. *Aguilar v. Texas*, 378 U.S. 108.

In the present case, the complaint for a search warrant verified by the Manchester Chief of Police stated (Defts. Exh. A-D, App. 133-164) -

"that he has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects

⁴Justice Harlan, concurring, recognized that, under *Ker*, "state searches and seizures are to be judged by the same constitutional standards as apply in the federal courts" (*id.* at 45). Justice Brennan, speaking for the dissenting justices, expressed their concurrence in the majority's holding that the state searches and seizures are to be judged by the same "constitutional standard" applied to federal officials. (*id.* at 46). See also *Aguilar v. Texas*, 378 U.S. 108, especially the concurring opinion of Justice Harlan at p. 116.

and things used in the commission of said offense now kept concealed in or upon a certain vehicle, to wit: 1951 Pontiac 2 Door Sedan. * * *

In *Aguilar v. Texas*, *supra*, the affidavit stated -

Affiants have received reliable information from a credible person and do believe that heroin, marijuana, barbituates and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to the provisions of the law.

The *Aguilar* affidavit was held too conclusory to satisfy the Fourth and Fourteenth Amendments. A fortiori the Amendments are not satisfied by the vaguer generality of the affidavit of the Manchester Chief of Police.

The court below concluded that the requirements of *Aguilar* were satisfied because "the magistrate was fully informed as to 'the facts relied upon by the complaining officer to show probable cause.'"

Not one iota of such information was furnished under oath, either by sworn testimony or by affidavit.⁵ The Fourth Amendment explicitly states that the showing of probable cause be "supported by Oath or affirmation." Unsworn oral reports cannot be used to circumvent the rule that a constitutionally-valid warrant cannot be issued by a magistrate "unless he can find probable cause therefor from facts or circumstances *presented to him under oath or affirmation.*" *Nathanson v. United States*, 290 U.S. 41, 47, approved in *Aguilar v. Texas*, 378 U.S. 108, 112 (emphasis supplied).

The reliance upon unsworn reports simply underscores the inadequacy of the entire search warrant procedure in the present case. The meeting leading to the issuance of the warrants was called by the Attorney General as law en-

⁵The literal accuracy of the above statement is beyond dispute. It rests upon the concession of Attorney General Maynard while serving as chief prosecutor at the hearing on the motion to suppress. (App. 80.)

forcement officer in order to review the progress of the investigation with his subordinates and plan future steps. Naturally, the reports made by the police and other law enforcement officials were not under oath. Thereafter the Chief of Police and Attorney-General went through the "formalities" of signing a complaint, taking the oath, and issuing a warrant. To hold that such a conference of those charged with ferreting out crime and preparing for a trial can provide an adequate basis for a search and seizure would make a mockery - we submit - of the Fourth Amendment's guarantee of a detached judicial determination of probable cause upon evidence under oath or affirmation.

3. The trial court's finding that an impartial magistrate would have issued the warrant does not cure the constitutional defect. "It is, of course, immaterial that the State might have been able to obtain the same [evidence] by means which did not violate the Fourth Amendment." *Mancusi v. DeForte*, 392 U.S. 364, 372, n. 12, quoting *Silverthorne Lumber Company v. United States*, 251 U.S. 385, 392. A search and seizure without a warrant cannot be validated by showing that there were grounds for the search upon which a warrant might have been issued. *Chapman v. United States*, 365 U.S. 610; *Johnson v. United States*, 333 U.S. 10. Nor can a warrant based upon insufficient evidence of probable cause be validated by proof that a stronger showing was available. *Giordenello v. United States*, 357 U.S. 480; *Aguilar v. Texas*, 378 U.S. 108. The reason for the rule, in all cases, is that an informed judicial determination of probable cause cannot be supplied *nunc pro tunc* after the wrong has been done. That reason applies equally to the present case.

4. Respondent's Brief in Opposition argued that the search was constitutional because incident to a lawful arrest. Regardless of whether the arrest was lawful or unlawful, the argument has two fatal defects.

First, the undisputed facts show that the search of the automobile and seizure of the evidence were not incident to the arrest. Petitioner was arrested at 7:40 p.m. and booked at 8:00 p.m. on February 19, 1964. There is no suggestion that he was in either automobile or about to use either automobile at that time. The automobiles were not impounded until at least an hour or hour and a half after petitioner had been imprisoned (App. 77-78). The automobiles were not searched until February 21 at the police station - two days after the arrest (App. 203, 257). The return upon the search warrant recites that the search was made under the warrant; it does not refer to an arrest (App. 144-148). Plainly, the search was not "substantially contemporaneous with the arrest and . . . confined to the immediate vicinity of the arrest." *Shipley v. California*, 395 U.S. 818, 819; *Stoner v. California*, 376 U.S. 483, 486.

Second, the search cannot constitutionally be sustained as an incident of the arrest because "[o]nce an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest." *Preston v. United States*, 376 U.S. 364, 367. Here, as in *Preston*, the booking and time interval demonstrate the complete absence of any of those circumstances which justify a search truly incident to a lawful arrest. See also *Chimel v. California*, 395 U.S. 752; *Chambers v. Maroney*, No. 830, October Term 1969, 38 U.S. Law Week 4547, 4548.

II.

THE UNLAWFUL SEARCH AND SEIZURE OF PETITIONER'S PERSONAL POSSESSIONS, WHILE HE WAS IN CUSTODY, WAS NOT VALIDATED BY THE ACQUIESCENCE OF HIS WIFE.

Late in the evening of February 2, 1964, about four hours after taking petitioner into custody, Detective Sergeant McBain of the New Hampshire State Police and Inspector Glennon of the Manchester Police were sent from the Manchester Police Station to petitioner's home in order to "check out" his activities by questioning his wife (App. 33). When Mrs. Coolidge acknowledged in answer to their questions that there were guns in the house, the officers asked to see the guns (App. 94). They followed to the bedroom closet where she took out the guns (App. 94). When they told her, in answer to her question, that they wanted to take the guns, she gave her assent (App. 102, 201). The two police officers also asked for and examined some of the petitioner's clothing (App. 101). They took away some trousers and a jacket as well as the four guns (App. 173-174). All the items were petitioner's personal possessions - not the shared property of husband and wife.

As Officers Glennon and McBain left, they told Mrs. Coolidge that they wished to inspect the two cars parked in the driveway. She gave them the keys. The officers took from the vehicles a pair of trousers, a wool cap, a glove, a coat hanger, a paring knife and a box of bullets. The officers claimed to have left a receipt with Mrs. Coolidge. (App. 201.)

At the trial one of the guns taken from the closet and also articles of clothing seized in the house were introduced in evidence against petitioner over his objection (App. 227, 228, 230, 267-268). Such use was reversible error if the conduct of the police officers violated the Fourth and Fourteenth Amendments. *Mapp v. Ohio*, 367 U.S. 643. Since the police officers had no warrant and petitioner himself

gave no assent, inspecting and carrying away his personal effects were palpable violations of his constitutional rights unless the conduct of his wife validated the action of the police. We submit that her conduct did not validate their otherwise admittedly unlawful intrusion.

1. Contrary to the opinion below, the role of Mrs. Coolidge did not take the activities of the police officers out of the category of "searches and seizures" covered by the Fourth Amendment. We assume *arguendo* that their presence in the living room or kitchen was not unlawful, but an unlawful search and seizure surely began when the officers demanded any guns belonging to petitioner. Mrs. Coolidge showed the officers where the guns were kept so that they did not have to hunt about for themselves, but it is plain that Mrs. Coolidge did not take the initiative - she went to the guns only after interrogation and at the officers' request. They followed her into the bedroom and to the bedroom closet without asking her permission. Similarly, the police asked for the petitioner's clothing and said that they wished to take it away with them. Throughout these events the police officers were seeking petitioner's personal belongings as evidence against him. Mrs. Coolidge was of concern to them at that stage only as she might acquiesce in the taking and serve as their instrument in making the search. Whatever the proper characterization of the earlier events, therefore, once the officers told Mrs. Coolidge to show them the guns, the search became theirs.

The critical distinction is sharpened by supposing that Mrs. Coolidge had given the officers "permission" to look for the guns. In that event there would have been the same kind of search and seizure as occurred later at the automobiles. Instead of allowing them to pry about until they found the guns, she avoided that unpleasantness by going to the closet for the officers, upon their direction, to show them the guns. Legally and practically, the two situations are identical. Difficulty in finding the wanted article is not the hallmark of a "search and seizure". The constitutional

command is violated whether the officers hunt for hours or, at their request, are led quickly by an unauthorized person to what they are seeking. In each case, there is the same unwarranted intrusion upon the privacy of the victim.⁶

In the house, therefore, as later in inspecting and taking articles from the automobiles, Officers McBain and Glennon violated petitioner's Fourth and Fourteenth Amendment rights unless his rights were effectively waived by the alleged consent of Mrs. Coolidge.

2. This Court has never decided whether proof of a wife's acquiescence in the search and seizure of her husband's personal effects in a criminal investigation in which he but not she is involved is enough to satisfy the Fourth Amendment. *Amos v. United States*, 255 U.S. 313, went off upon the ground that the wife's consent was coerced - a position that might well be taken in the present case (pp. 38-39 below). In *Henry v. Mississippi*, 379 U.S. 443, the

⁶The instant case should also be contrasted with the situation that would arise if a wife took her husband's belongings to the police station upon her own initiative. See Recent Case, *State v. Coolidge*, 79 *Harv. L. Rev.* 1513, 1519 (1966). Since the police would have done no wrong, the evidence would be admissible just as if the articles came into the hands of the police from a total stranger to the family without any form of police encouragement or participation. *Burdeau v. McDowell*, 256 U.S. 465; *United States v. Goldberg*, 330 F.2d 30 (3rd Cir. 1964), cert. denied, 377 U.S. 953; see *United States v. McGuire*, 381 F.2d 306, 312-314, n. 5, collecting recent authorities. *People v. Helmus*, 50 Misc.2d 47, 269 N.Y.S.2d 613 (1966) was such a case.

If the police ask the stranger to get the evidence for them, he becomes their agent and use of the evidence violates the Fourth and Fourteenth Amendments. *Flagg v. United States*, 233 Fed. 481 (2nd Cir. 1916), approved in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392; cf. *Byars v. United States*, 273 U.S. 28, 32; *Stapleton v. Superior Court*, 73 Cal. Repr. 575, 447 P.2d 967 (1969). See, also, Note, *Seizures by Private Parties*, 19 *Stan. L. Rev.* 608 (1967).

The rule should be the same if the police ask the wife to get the evidence, unless her assent binds her husband.

Court noted the importance of issue but decided the case upon other grounds. The numerous precedents in State and lower federal courts reach widely variant conclusions.⁷ Although most of the opinions upholding such searches and seizures are broad enough to cover the present case, many of the cases could better have been decided upon narrower grounds not applicable to the present controversy.⁸ Very few cases sustain the admission of the defendant's own personal effects as evidence where the police officers sought and seized them with only his wife's assent at a time when he was in custody and his own decision upon whether to surrender his privacy could readily have been obtained.⁹

⁷The best analyses of the issues are Mascolo, *Interspousal Consent to Unreasonable Searches and Seizures: A Constitutional Approach*, 40 Conn. Bar. J. 351 (1966); Recent Case, *State v. Coolidge*, 79 Harv. L. Rev. 1513 (1966). Note, *Third Party Consent*, [1967] Wash. U.L.Q. 12, 25-27 contains a useful collection of cases. See also Comment, *The Effect of a Wife's Consent to a Search and Seizure of the Husband's Property*, 69 Dick. L. Rev. 69 (1964).

We have endeavoured to classify in the text and footnotes following those cases which deal directly with the effect of a wife's or mistress's voluntary assent to what would otherwise be an unconstitutional search and seizure. The collection is intended to be complete but we should note that, since close judgments were sometimes necessary concerning the actual ground of decision, some cases have been omitted that another reader might include. For example, we exclude cases in which the wife holds title jointly with the husband and the decision is based upon grounds applicable to any co-owner. *E.g.* *State v. Cairo*, 74 R.I. 377, 60 A.2d 841 (1948).

No effort has been made to collect cases upon the effect of assent by a parent, landlord, child, or other third party.

⁸The decisions which should have been put upon narrower grounds are categorized below in the text and notes at n. 9, 15, and 17 below.

⁹*People v. Carter*, 48 C.2d 737, 312 P.2d 665 (1957); *People v. Garner*, 234 C.A.2d 212, 44 Cal. Repr. 217 (1965); *People v. Palmer*, 31 Ill.2d 58, 198 N.E.2d 839 (1964); *State v. Kennedy*, 80 N.M. 152, 452 P.2d 486 (1969); *cf.* *Commonwealth v. Cabey*, 30 Pa. D. & C. 2d 753 (1963), affirmed by equally divided court, 201 Pa. Super. 433, 193 A.2d 663 (1963), cert. denied, 380 U.S. 926.

Our submission, on the other hand, is supported by the precedents holding that the wife's consent to a search and seizure of the family premises does not affect the husband's rights¹⁰ and also by the cases taking the narrower ground

In the following cases the husband was in police custody and could therefore have been asked for permission but the police were searching for contraband or stolen property, not for his personal effects: *People v. Dominguez*, 144 C.A.2d 63, 300 P.2d 194 (1956); *People v. Perroni*, 14 Ill.2d 581, 153 N.E.2d 578 (1958), cert. denied, 359 U.S. 980, 1004; *People v. Harvey*, 48 Ill. App.2d 261, 199 N.E.2d 236 (1964); *Gutridge v. State*, 236 Md. 514, 204 A.2d 557 (1964). Compare *Roberts v. United States*, 332 F.2d 892 (8th Cir. 1964), cert. denied, 380 U.S. 980 (expended bullet desired for comparison); *State v. Comeaux*, 252 La. 481, 211 So.2d 620 (1968) (pinking shears and rags used in preparation for burglary).

In the following cases the search was for the husband's personal effects but he was neither present nor in custody: *In Re Lessard*, 62 C.2d 497, 399 P.2d 39 (1965); *Bellam v. State*, 233 Md. 368, 196 A.2d 891 (1964); *Chandler v. State*, 7 Md. App. 646, 256 A.2d 695 (1969); *Ennox v. State*, 130 Tex. Cr. 220, 94 S.W.2d 473 (1936); *Burge v. State*, ___ Tex. Cr. ___, 443 S.W.2d 720 (1969). See *Lester v. State*, 216 Tenn. 615, 619-622, 393 S.W.2d 288, 290-291 (1965), cert. denied, 383 U.S. 952.

In the following cases the search was for contraband or stolen property and the husband was neither present nor in custody: *Stein v. United States*, 166 F.2d 851 (9th Cir. 1948), cert. denied, 334 U.S. 844; *United States v. Retolaza*, 398 F.2d 235 (4th Cir. 1968), cert. denied, 393 U.S. 1032; *United States v. Thompson*, 421 F.2d 373 (5th Cir. 1970); *People v. Meglitorino*, 192 C.A.2d 525, 13 Cal. Repr. 635 (1961); *People v. Speice*, 23 Ill.2d 40, 177 N.E.2d 233 (1961), cert. denied, 369 U.S. 848; *Smith v. McDuffee*, 72 Ore. 276, 142 Pac. 558 (1914); *Pruitt v. State*, 109 Tex. Cr. 71, 2 S.W.2d 856 (1928); *Alejandro v. State*, 116 Tex. Cr. 325, 31 S.W.2d 456 (1930); *Ellis v. State*, 130 Tex. Cr. 220, 93 S.W.2d 438 (1936); *Wheelless v. State*, 142 Tex. Cr. 68, 150 S.W.2d 806 (1941); *Brown v. State*, 155 Tex. Cr. 347, 235 S.W.2d 142 (1950); *Joslin v. State*, 165 Tex. Cr. 161, 305 S.W.2d 351 (1957).

¹⁰*United States v. Rykowski*, 267 Fed. 866 (E.D. Ohio 1920); *Cofer v. United States*, 37 F.2d 677, 679 (5th Cir. 1930); *United States v. Derman*, 66 F.Supp. 511 (S.D. N.Y. 1946); *United States v. Greer*, 297 F.Supp. 1265, 1269 (N.D. Miss. 1969); *State v. Pina*, 94 Ariz. 243, 383 P.2d 167 (1963); *Carlton v. State*, 111 Fla. 777, 149

that, regardless of what may be the rule about other portions of the premises, the wife cannot validate official prying into her husband's personal effects.¹¹

On its face, the assertion that a wife can waive her husband's constitutional right to be free from official prying is a startling proposition. The lesson would be that the police, in *Stoner v. California*, 376 U.S. 483, should have telephoned Mrs. Stoner (assuming her existence) and obtained her consent to search Stoner's hotel room. In *Katz v. United States*, 389 U.S. 347, the FBI agents, if the proposition is sound, could have avoided a constitutional violation without the necessity of obtaining a court order based upon probable cause merely by inducing Mrs. Katz to consent to the electronic surveillance of her husband's telephone conversations. These instances are the more dramatic because the search and seizure did not take place at the couple's

So. 767 (1933); *Rivers v. State*, 59 So.2d 740 (Fla. 1952); *State v. Blakely*, 230 So.2d 698 (Fla. 1970); *Dalton v. State*, 230 Ind. 626, 105 N.E.2d 509 (1952); *Duncan v. Commonwealth*, 198 Ky. 841, 250 S.W. 101 (1923); *Veal v. Commonwealth*, 199 Ky. 634, 251 S.W. 648 (1923); *Henry v. State*, 253 Miss. 263, 278-279, 154 So.2d 289, 295, vacated, 379 U.S. 443, on remand, ___ Miss. ___, 202 So.2d 40 (1967), cert. denied, 392 U.S. 931; *State v. Hall*, 264 N.C. 559, 142 S.E.2d 177 (1965); *Carignano v. State*, 31 Okla. Cr. 228, 238 P. 507 (1925); *Rose v. State*, 36 Okla. Cr. 333, 254 P. 509 (1927); *Simmons v. State*, 94 Okla. Cr. 18, 229 P.2d 615 (1951); *Humes v. Taber*, 1 R.I. 464, 472-473 (1850); *Kelley v. State*, 184 Tenn. 143, 197 S.W.2d 545 (1946); see *Fitter v. United States*, 258 Fed. 567, 573-574 (2d Cir. 1919); cf. *Foster v. United States*, 281 F.2d 310 (8th Cir. 1960). The status of *Dalton v. State*, *supra*, seems cloudy after *Greer v. State*, ___ Ind. ___, 255 N.E.2d 919 (1970).

¹¹*State v. Evans*, 45 Hawaii 622, 372 P.2d 365 (1962); *Manning v. Commonwealth*, 328 S.W.2d 421 (Ky. 1959); *People v. Gonzalez*, 50 Misc.2d 508, 270 N.Y. S.2d 727 (1966). See also *Cass v. State*, 124 Tex. Cr. 208, 216, 61 S.W.2d 500, 504 (1933) intimating that the usual Texas rule holding the wife's consent effective to validate a search and seizure of the husband's property might not apply to "some private writing or personal effect."

home, but it seems equally startling to suppose that a wife can effectively waive her husband's right not to have officialdom listen to his private telephone conversations upon his home telephone or that the Fourth Amendment is satisfied if she tells the police, "You can go all through my husband's papers in search of evidence linking him to subversion. Look carefully through the oak desk; it's in his study in the back of the house. But be sure to come in the afternoon when I am out. I can't risk being seen with you."

The core policy of the Fourth Amendment is the preservation of the privacy of the individual against official intrusion into his person, home, papers and effects. The Amendment may do more, for it may guarantee some security against interference with property interests, but the basic aim is to secure for the individual's person and personal belongings a private area in which he may be free, if he wishes, from the intrusions of government agents unless their intrusion is justified by exigent circumstance or a warrant issued by a detached and neutral judicial officer upon a showing of probable cause.¹²

Thus, in *Davis v. United States*, 328 U.S. 582, 587 the Court observed -

The law of searches and seizures as revealed in the decisions of this Court is the product of the interplay of these two constitutional provisions [referring to the Fourth and Fifth Amendments]. *Boyd v. United States*, 116 U.S. 616. It reflects a dual purpose - protection of the privacy of the individ-

¹²In speaking of the "privacy" secured by the Fourth Amendment we refer only to the right to be free from unauthorized government intrusions of a character usually associated with law enforcement. "Privacy", in this sense, is not identical with secrecy. An individual's right of privacy against the press and other non-governmental invasions is usually a matter of State law except as the latter must yield to First Amendment privileges. Furthermore, such expressions as "zone of privacy" or "area of privacy" are not intended to have strict geographical or spatial connotations. See *Katz v. United States*, 389 U.S. 347.

ual, his right to be let alone; protection of the individual against compulsory production of evidence against him.

Similarly, in *Johnson v. United States*, 333 U.S. 10, 14, 15, the Court spoke of the individual's "right of privacy" to describe personal security and freedom from surveillance of government officials. See also *McDonald v. United States*, 335 U.S. 451, 455. And in *Wolf v. Colorado*, 338 U.S. 25, 27, the Court held that "[t]he security of one's privacy against arbitrary intrusions by the police" is "at the core of the Fourth Amendment". Mr. Justice Black, speaking for the Court, quoted this holding in *Frank v. Maryland*, 359 U.S. 360, 362, 365, and observed -

two protections emerge from the broad constitutional proscription of official invasion. The first of these is the right to be secure from intrusion into personal privacy, the right to shut the door on officials of the state unless their entry is under proper authority of law. The second, and intimately related protection, is self-protection: the right to resist unauthorized entry which has as its design the securing of information to fortify the coercive power of the state against the individual, information which may be used to effect a further deprivation of life or liberty or property.

The personal quality of both rights - of privacy against official intrusion and of resistance to unauthorized demands for evidence of guilt - has also been emphasized in this Court's decisions. In *Katz v. United States*, 389 U.S. 347, the Court twice declared (pp. 351 and 353) -

the Fourth Amendment protects people, not places

Since the protection is personal, only the individual upon whose privacy the police wish to intrude can decide whether to shut the door or expose what they wish to see. This principle, too, is the law of this Court. In *Stoner v. California*, 376 U.S. 483, 489, the Court observed -

It is important to bear in mind that it was petitioner's constitutional right which was at stake here,

and not the night clerk's nor the hotel's. It was a right, therefore, which only petitioner could waive by word or deed, either directly or through an agent.

Similarly, in the case at bar, it was petitioner Coolidge's constitutional right, not his wife's, which was at stake when the police asked to see his guns and clothing. Only Coolidge could waive the right, therefore, directly or through an agent.

There is no suggestion that petitioner consented to the official intrusion by word or deed. He was readily available, being in custody, but the police, instead of seeking his permission to inspect his personal belongings, went to his home where they might prevail upon his wife.

Nor can it be contended that Mrs. Coolidge was petitioner's agent for the purpose of deciding whether to assert or waive his constitutional rights. The elementary agency principle that the marital relation gives the wife neither actual nor apparent authority nor agency power to bind her husband in commercial transactions (*Restatement (Second) of Agency* § 22 (1957)) applies *a fortiori* to so personal a matter as the waiver of constitutional rights. The State offered no evidence whatsoever to satisfy its burden of showing that petitioner had authorized, or given the police the impression that he had authorized, his wife to act as his agent if anyone should come to the house seeking to gather evidence from his belongings while they held him at the police station.

In an emergency authority *ex necessitatu* can sometimes be implied. Cf. *Restatement (Second) of Agency* § 47, comment *b* (1957). If a suspect were unavailable and the question were whether his interests would be better served by cooperation with the police or insistence upon a search warrant, conceivably the wife might have had implied authority to make the decision. But that is not this case. Petitioner was not "absent" in the only sense relevant here.

He was readily available at the police station. The only reason for not seeking his decision - if one adverted to the question - was the chance that he might withhold his consent.

Nor is this a case in which the police are invited into the premises by the wife as in the normal conduct of her own or family affairs and the officers then seize an article open to ordinary view. Such cases are particular examples of the numerous situations in which two individuals have formed so close an association that the zone of privacy which each may decide whether to open or bar to governmental intrusion necessarily overlaps the privacy of the other. *Frazier v. Cupp*, 394 U.S. 731, is the leading example in this Court. Frazier and Rawls agreed to share a duffel bag. Later, suspicion fell upon both in connection with a serious crime. Rawls, while undergoing questioning, gave the police permission to search the duffel bag for his clothing. The agreement between Frazier and Cupp to share the bag naturally gave each the right to authorize an inspection in the course of any inquiry into what he himself might have in the bag even though it affected the privacy of the other. The Court held that because the inspection for Rawls' clothing was permissible, the police were entitled to use against Frazier any evidence upon which they came incidentally in the course of the lawful search for Rawls' effects. This does not mean that Rawls could waive Frazier's constitutional rights. The intrusion would have been unconstitutional if the police had asked Rawls to let them search the duffel bag solely in an effort to obtain evidence against Frazier,¹³ for in that event Rawls would have been deciding what to do about Frazier's privacy rather than his own. In the actual posture of the case Frazier's clothes became admissible in evidence because they were the incidental fruits of a lawful inspection into Rawls' effects. Since the exclusionary rules of the *Silverthorn Lumber* case and *Mapp v. Ohio* are

¹³See pp. 30-31 below.

only deterrent sanctions to check unlawful searches, there is no reason to exclude evidence incidentally produced by lawful police conduct, even though a search for that evidence alone would have been unlawful. That this was the ground of the decision is demonstrated by both the language of the opinion and the emphasis put upon *Harris v. United States*, 390 U.S. 234.¹⁴

A situation between husband and wife similar to *Frazier v. Cupp* would be presented if husband and wife were suspected of criminal conduct and the wife voluntarily consented to a search of their home in an effort to clear herself of the accusation, relieve her conscience, or mitigate the consequences of her offense. A wife has authority to admit others to the property in conducting her personal affairs. In such a case any evidence against the husband which incidentally came to the attention of the police might well be admissible at his trial. That was the actual situation in a number of cases upholding the efficacy of the wife's consent although the decisions were sometimes put upon broader grounds.¹⁵ Plainly, that is not this case. Mrs. Coolidge could not have been involved in the crime.

Similarly, we may assume *arguendo* that the mere entrance of the police officers into the Coolidge home was

¹⁴In the *Harris* case the Court held (390 U.S. at 236):

It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence. *Ker v. California*, 374 U.S. 23, 42-43 (1963); *United States v. Lee*, 274 U.S. 559 (1927); *Hester v. United States*, 265 U.S. 57 (1924).

¹⁵The following cases upholding the admission of evidence seized by police officers who have entered with the wife's consent fall into this category: *Gurleski v. United States*, 405 F.2d 253 (5th Cir. 1968), cert. denied, 395 U.S. 977, 981; *People v. Rodriguez*, 212 C.A.2d 525, 28 Cal. Reprtr. 150 (1963); *Padilla v. State*, 160 Tex. Cr. 618, 273 S.W.2d 889 (1954); cf. *United States v. Sergio*, 21 F.Supp. 553 (E.D. N.Y. 1937).

not a violation of petitioner's constitutional rights. The police officers wished to question Mrs. Coolidge. Their presence intruded upon her privacy, but it was for her to choose whether to shut the door or surrender her privacy while she answered their questions.¹⁶ If her assent was truly voluntary, there was no wrongful intrusion upon her privacy. In the language of agency, she was authorized to admit the officers because giving them information, if she wished, was part of her personal affairs. Possibly there was no wrong to petitioner upon this assumption, since this part of her zone of privacy overlapped his. Consequently, if the police officers had observed the evidence while they were seeking what testimony she could give them, this case, like *Frazier v. Cupp*, might well have been governed by the rule that "objects falling in the plain view of an officer who has a right to have that view are subject to seizure and may be introduced in evidence" (*Harris v. United States*, 390 U.S. 234, 236).¹⁷

But again, that is not the actual case. The situation changed once the police sought petitioner's guns and went into the bedroom to obtain them. At that juncture the question of Mrs. Coolidge's own relationship with govern-

¹⁶There is an ironic contrast between the rule that seeks to protect the marital relation by disqualifying a wife from testifying against her husband without his consent (*Hawkins v. United States*, 358 U.S. 74, 77-78) and the freedom accorded police officers to interrogate wives about their husbands' activities during a criminal investigation.

¹⁷The above rationale supports a number of decisions upholding the seizure of evidence where the police were invited into the premises by the wife. *United States v. Ball*, 344 F.2d 925 (6th Cir. 1965); *People v. Howard*, 166 C.A.2d 638, 334 P.2d 105 (1958); *People v. Alvarez*, 236 C.A.2d 106, 45 Cal. Repr. 721 (1965); *People v. Bryan*, 254 C.A.2d 231, 62 Cal. Repr. 137 (1967), cert. denied, 390 U.S. 1044; *People v. Shambley*, 4 Ill.2d 38, 122 N.E.2d 172 (1954); *Traylor v. State*, 111 Tex. Cr. 58, 11 S.W.2d 318 (1928). Compare *United States v. Alloway*, 397 F.2d 105 (6th Cir. 1968), where the officers searching the premises pursuant to a valid warrant observed two suits important as evidence but not covered by the warrant and took them with the wife's consent.

mental authority - of her right to stand upon her privacy against official intrusion or to invite the officers into her house to tell them what she knew about events bearing upon their investigation - was no longer involved. When the officers expressed interest in seeing the guns, they began intruding into petitioner's privacy and his privacy alone. The guns belonged to petitioner. There is no suggestion that Mrs. Coolidge ever used them. Guns are peculiarly a man's personal effects.¹⁸ The police were not concerned about any connection between Mrs. Coolidge and the guns. They were no longer eliciting her testimony. It was *his* guns they were after; it was *he* against whom they were seeking evidence. Mrs. Coolidge was involved at this juncture only as she might give the police petitioner's private belongings - or acquiesce in their taking them - without a warrant. Their request for the guns and jacket was neither more nor less than a demand that Mrs. Coolidge be their instrument in violating petitioner's privacy, thus defeating his rights "to shut the door on officials of the State" and "to resist unauthorized entry which has as its design the securing of information to fortify the coercive power of the State" (*Frank v. Maryland*, 359 U.S. 360, 365). Since those rights were personal to petitioner and there was no question of Mrs. Coolidge's own relation to the police, only petitioner could effectively waive the constitutional protection.¹⁹

3. A significant number of lower court decisions hold that a wife may effectively consent to a search and seizure of property in the couple's home because it is subject to her "possession and control". We urge that this rationale should be rejected for two independently-sufficient reasons.

First, the "rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of

¹⁸Mrs. Coolidge testified that she had no interest in firearms and could not tell a rifle from a shotgun unless she could see a bullet (App. 100).

¹⁹See authorities cited n. 7, 10 and 11 above.

agency or by unrealistic doctrines of 'apparent authority.'" *Stoner v. California*, 376 U.S. 483, 489. The "subtle distinctions . . . of private property law" are likewise irrelevant. *Jones v. United States*, 362 U.S. 257, 266. Recently, the Court declared in *Warden v. Hayden*, 387 U.S. 294, 304 -

The premise that property interests control the right of the Government to search and seize has been discredited. Searches and seizures may be 'unreasonable' even though the Government asserts a superior property interest at common law. We have recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property, and have increasingly discarded fictional and procedural barriers rested on property concepts.

Second, the rule that "possession and control" gives the wife power to consent to the search and seizure of her husband's property does not parse even as a matter of property law.

(a) Under the customary marital relation the wife has something like custody or physical possession of household goods and also the implied authority to manage both real and personal property in a way appropriate to the day-to-day conduct of household affairs as sanctioned by custom or social usage. She may have greater power if her husband is absent during an emergency. In addition, she doubtless may use the premises and household goods for a wide variety of personal activities and interests.

But the wife's "possession and control" has never been held, in the law of either agency or property, to be an unlimited power of disposition. A wife may look in the drawers or among the papers on her husband's desk to find paper, pencil, or a check book, but none would suggest that the normal marriage relation is enough to imply permission for her to bring in a newspaper reporter to read her husband's letters, study his bankbook, and take copies of his private papers. In *Barker v. Carolina Auto Sales*, 236 S.C. 594, 115 S.E.2d 291 (1960), the court held that a wife can-

not sell her husband's car while he is in the Army, saying that "the mere fact that the husband is absent does not give rise to a presumption that the wife is his agent generally; her authority springs from and is limited to what can be reasonably presumed to be the intention of the husband; it does not extend beyond the authority which is usually and customarily conferred by husbands under the same or similar circumstances." Accord: *Steinburg v. Levy*, 236 S.W.2d 909 (Mo. App. 1922) (sale of household furniture); *State v. Luckey*, 150 Ore. 566, 46 P.2d 1042 (1935) (pledge of husband's tools to secure payment of rent).

Since the wife's "possession and control" does not give her unlimited dominion even as a matter of property law, it does not necessarily include authority, even as a matter of property law, to turn her husband's effects over to the police. Since her authority, in the absence of express authorization or an emergency, is limited to the dispositions sanctioned by custom and social usage as incident to running household affairs, it does not include authorizing an otherwise unlawful search and seizure directed at her husband. Giving the husband's personal belongings to the police is not commonly understood to be part of the normal management of a household. The exchange of marriage vows does not normally convey the message, "Dear wife, always remember that you are authorized to turn any of my belongings over to the police, even though they have not asked my permission."

(b) A number of federal courts of appeals have followed the Eighth Circuit in reasoning that -

the right of the wife . . . to enter the home which was in her possession and control cannot be seriously questioned and that her invitation to and authorization to the officers to enter and search was an outgrowth thereof. It is not a question of agency, for a wife should not be held to have authority to waive her husband's constitutional rights. This is a question of the wife's own rights to authorize entry into the premises where she lives and of which she has control.

Roberts v. United States, 332 F.2d 892, 896 (8th Cir. 1964), cert. denied, 380 U.S. 980. See also *United States v. Thompson*, 421 F.2d 373 (5th Cir. 1970).

The argument fails to explain how or why the right of the wife to be in the home carries as its "outgrowth" the right to authorize the police to enter and search for her husband's possessions. The wife's own right or privilege to be on the premises is not assignable. The wife's "rights to authorize entry into the premises where she lives and of which she has control" are not indivisible so that she must have either unlimited power to authorize entry or none. On the contrary, common sense tells that the purpose is often decisive. A wife has the undoubted right to authorize entry by her friends or by people such as tradesmen and salesmen with whom she conducts authorized family business but - to revert to earlier examples - surely she has no such right to open the premises to a secondhand dealer to whom she has wrongfully sold the family furniture or to a reporter seeking to examine her husband's personal correspondence. Cf. *Mohn v. Summer*, 48 Cal. App. 314, 191 P.2d 991 (1920). Thus, even as a matter of property law the extent of her right depends upon the use that is invited. *Collins v. Croteau*, 322 Mass. 291, 77 N.E.2d 305 (1948).

In dealing with the police it may well be the wife's privilege to authorize entry while the police are seeking to examine the household property in search of evidence against her, or to elicit her testimony pertinent to some criminal investigation regardless of whether her husband is a suspect. Confined to such cases the Eighth Circuit's statement that the question is one of the wife's own right to authorize entry may well be accurate. Extended to a case like the present, the proposition is too indiscriminating. The wife's right to use the premises in conducting her personal affairs and authorized family business does not include power to turn her husband's possessions over to those seeking evidence against him even though he has not given permission by word or deed and even though the police could

easily request his permission. The two uses of the property by the wife are utterly different; the authority for one use does not include the other.

The importance of distinctions based upon the purpose of the entry has already been recognized in the law of search and seizure. In *Stoner v. California*, 376 U.S. 483, the hotel employees undoubtedly had express or implied authority to enter Stoner's hotel room in the performance of their normal duties but, even as a matter of property law, that authority would not have carried with it the right to invite the police into the room for the purpose of finding evidence. Similarly, in *Chapman v. United States*, 365 U.S. 610, the owner of the house, who authorized the search, had authority to enter for a number of purposes, such as to view waste, but it did not include the right to take police officers into the building for the purpose of searching for a distillery. Similarly, Mrs. Coolidge's authority to admit police officers seeking her testimony did not include the right to surrender the security of her husband's personal possessions.

4. The court below held that the search of petitioner's automobiles and seizure of his belongings did not violate the Fourteenth Amendment because a search and seizure with the wife's consent is not "unreasonable" (App. 219-220). This approach, even though mistaken, has at least the virtues of intellectual accuracy and candor. Plainly, there was no waiver in the customary sense of an "intentional relinquishment of a known constitutional right or privilege" (*Johnson v. Zerbst*, 304 U.S. 458, 464). Equally, plainly, Coolidge did not convey to either his wife or the police the impression that, even though his permission could be readily requested, he had given her authority to dispense with the request and permit a search for, and seizure of, evidence against him. No rule of agency or property law gives the wife analogous authority in other transactions. Consequently, if a wife merely because of the marital relation and her presence on the premises has power to validate

a search for evidence against her husband among his personal effects by the very officials who hold him in custody, that power must derive from some rule of constitutional law made by this Court rather than from any consensual manifestation or principle of property. And the rule would have to be that the will of the wife is enough to make "reasonable" an otherwise "unreasonable" official intrusion into her husband's affairs. In effect, the will of the wife, based upon whatever fear or vagary might move her, would substitute for an impartial judicial determination of probable cause.

We submit that the Court should reject this proposition.

In the first place, a decision that the wife's consent makes a search without a warrant "reasonable" within the Fourth Amendment would be inconsistent with the now well-established principle that a search and seizure without a warrant issued upon probable cause is unreasonable as a matter of law, unless justified by exigent circumstance. *McDonald v. United States*, 335 U.S. 451, 455-456; *Jones v. United States*, 357 U.S. 493, 499; *Chapman v. United States*, 365 U.S. 610. The older view followed by the court below which accorded no preference to a warrant but looked only to an ultimate determination of reasonableness, has been repudiated. See, e.g. *Chimel v. California*, 395 U.S. 752, overruling *United States v. Rabinowitz*, 339 U.S. 56. It is settled that "the 'general requirement that a warrant be obtained' is basic to the Amendment's protection of privacy, and 'the burden is on those seeking an exemption to show the need for it'." Justice Harlan dissenting in *Chambers v. Maroney*, No. 830, October Term 1969, 38 U.S. Law Week 4547, 4550, 4552.²⁰

²⁰*Commonwealth v. Cabey*, 30 Pa. D. & C.2d 753 (1963), affirmed by an equally divided court, 201 Pa. Super. 433, 193 A.2d 663 (1963), cert. denied, 380 U.S. 926, is an excellent example of the extent to which many State and lower federal courts have held the wife's consent effective to validate an otherwise unlawful search and seizure under the misapprehension that the only question was whether

Second, vesting power in the wife to surrender her husband's effects to the police is inconsistent with the settled policy of the law towards marital relations. For a wife to assist the police is likely, after the event, to have a disruptive effect upon the marriage. Before the event, the cautious and knowledgeable husband concerned about his privacy would be under pressure to conceal from his wife any papers and effects that prying officials might seek to scrutinize or use against him. Concealment also strains marital relations. To avoid these consequences, the federal courts have long disqualified a wife from testifying against her husband unless both partners consent. *Hawkins v. United States*, 358 U.S. 74, 77-78. The same considerations should be given force in developing the law of search and seizure. Comment, *The Effect of a Wife's Consent to a Search and Seizure of the Husband's Property*, 69 Dick. L. Rev. 69 (1964).

Third, permitting a wife to consent to the search and seizure of her husband's property is bound to have capricious consequences. The ignorant or frightened wife is likely to give her consent because, like Mrs. Coolidge, she "thought I had to" (App. 94). The knowledgeable wife devoted to her husband will shut the door on the police, telling them that since they hold the husband in custody they have only to ask his permission and let him decide for himself. The jealous or angry wife may welcome the opportunity for vengeance. With diverse motives determining the decision, it is highly improbable that the wife's willingness to turn her husband's papers or belongings over to the police on any particular occasion would correlate affirmatively with any objective justification for the search.

the police had acted reasonably. In the *Cabey* case the search for and seizure of a revolver was held "reasonable" partly because the accused owner had been taken into custody a short time earlier and partly because of the wife's consent.

Fourth, such a rule opens the door to intimidation and other forms of pressure upon the wife that cast grave doubt upon the voluntary character of her assent. *E.g.*, *Amos v. United States*, 255 U.S. 313. The present case furnishes a strong example. The Trial Court found that "Mrs. Coolidge intended to cooperate with the police in every way and to furnish them freely with both information and guns in order, so she stated, to clear her husband of any suspicion" (App. 186-187, 201). But the circumstances under which that intent was formed are highly significant. Mrs. Coolidge had "no knowledge of any constitutional rights, either by explanation of the police or otherwise" (App. 186, 201). She was "an extremely thin, nervous woman . . . more nervous than a normal person of her age" (App. 187, 202). The two police officers came to the house, without prior warning. They immediately directed Mrs. Coolidge's mother-in-law to leave the house, thus isolating Mrs. Coolidge. Next, they told Mrs. Coolidge that her husband was "in serious trouble" and would not be coming home (App. 93). Only that afternoon a senior officer of the Manchester police had ordered her to "cooperate with" the police, saying that if she "withheld any information he could give me a prison sentence" (App. 92). It is hardly surprising that Mrs. Coolidge "felt that I had to" comply with the officers' request for the guns (App. 94). Viewed most favorably to the State, the consent was that of a highly nervous woman ignorant of constitutional safeguards, alone at night with officialdom, whose husband was in serious trouble and who had been warned that she could go to prison if she failed to cooperate.

We need not argue whether such consent is voluntary or coerced.²¹ To treat any wife's acquiescence in police de-

²¹ Many federal and State decisions indicate that such official pressure as was present here is sufficient to invalidate the wife's consent. *E.g.*, *Amos v. United States*, 255 U.S. 313; *Williams v. United States*, 263 F.2d 487 (D.C. Cir. 1959); *Fitter v. United States*, 258 Fed. 567 (2d Cir. 1919); *People v. Haskell*, 41 Ill.2d 25, 241 N.E.2d 430 (1968); *Duncan v. Commonwealth*, 198 Ky 841, 250 S.W. 101 (1923);

mands for her husband's personal effects as a substitute for the judgment of a magistrate creates too great a risk of putting the privacy of a man's papers and effects at the mercy of official pressure upon a frightened and uninformed spouse.

Fifth, the sole effect of such a rule, in a case like the present, is to legitimize searches and seizures without a warrant when the husband would withhold his consent. Here the husband was in custody. The police could easily have asked for his permission to inspect his guns and automobiles and to take any personal items for laboratory tests. Even if they had started to the house without the intention of procuring the articles, they had only to ask Mrs. Coolidge's permission to telephone the police station. If petitioner had given consent, then the police could have gone forward without a warrant.²² In fact, the police, thoughtlessly or perhaps deliberately, gave petitioner no opportunity to express his will concerning the search of his belongings. To require the police to ask puts them to no trouble when the husband would assent. It would affect their investigation if the husband would withhold consent. To adopt a rule that the husband need not be asked when he is available would thus serve no purpose except to allow

State v. Lindway, 131 Ohio St. 166, 2 N.E.2d 490 (1936); Carignano v. State, 31 Okla. 228, 238 Pac. 507 (1925); Byrd v. State, 161 Tenn. 306, 30 S.W.2d 273 (1930); State v. Bonolo, 39 Wyo. 299, 270 Pac. 1065 (1928).

²²If he had refused, surely that should have ended the question until a magistrate determined whether there was probable cause. Despite one contrary decision (*People v. Smith*, 183 C.A.2d 670, 6 Cal. Repr. 866 (1960)), we cannot believe that this Court would seriously entertain the proposition that a wife's acquiescence in a search and seizure of her husband's personal papers and effects is enough to satisfy the Fourth Amendment in the face of the husband's objection.

the police to use the wife's consent, if they can obtain it, for the very purpose of circumventing the constitutional protection her husband would want to assert.

In sum, we suggest that determining the effect of a wife's consent upon her husband's claims under the Fourth and Fourteenth Amendments requires more discriminating analysis than is found in many lower court opinions. In this case, the Court need decide no more than that, when the husband is readily available to decide for himself, a search of his personal papers and effects for the purpose of seeing whether they will supply evidence against him, made without a warrant, is not validated by the acquiescence or assent of his wife. That much, we submit, is the minimum the constitutional safeguards require.

CONCLUSION

The judgment of the Supreme Court of New Hampshire should be reversed for either or both of the foregoing reasons.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1970

Supreme Court, U.S.

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No. 323

EDWARD H. COOLIDGE, JR.,

Petitioner,

v.

THE STATE OF NEW HAMPSHIRE

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF NEW HAMPSHIRE

BRIEF FOR RESPONDENT

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF NEW HAMPSHIRE

BRIEF FOR RESPONDENT

STATEMENT

Two indictments were returned by the Grand Jury in the January, 1964, Term of Superior Court of Hillsborough County charging the petitioner, Edward H. Coolidge, Jr., with the murder of Pamela Mason. (App. 3-4).

On July 23, 1964, the petitioner filed a Petition to Quash Search Warrants, seeking to suppress items of personal property belonging to him which were obtained by the police during their investigation of this case both with and without search warrants.

A hearing was held on this petition on August 31, 1964, and September 1, 1964, during which oral testimony was presented by the petitioner in furtherance of his petition. Nine witnesses testified at the hearing, seven of whom were police officers (App. 7-132).

The Hillsborough County Superior Court made Tentative Findings on the petition on September 1, 1964, at the conclusion of the hearing. (App. 184-189).

Subsequent to this, the petitioner filed a Request for Findings of Fact and Requests for Rulings of Law, and the respondent, State of New Hampshire, also filed a Request for Findings of Fact. (App. 189-194).

On September 18, 1964, the State filed a Motion for Further Hearing upon the Petitioner's Petition to Quash, which the Superior Court granted on October 6, 1964. A further hearing was held on October 13, 1964, and at the conclusion of the hearing, the Superior Court made further findings of fact as requested by the State. (App. 194-195).

On the same date, October 13, 1964, the Superior Court made rulings on petitioner's and the State's Requests for Findings and Rulings. (App. 196-198).

The Superior Court, then made a Composite of Findings on Petitioner's Petition to Quash, and the petitioner and respondent both filed exceptions to the Superior Court's Findings. (App. 199-205).

The Superior Court did not rule on the motion or make rulings of law, but instead reserved and transferred all questions of law raised in the proceedings outlined above, for a decision by the New Hampshire Supreme Court. A Reserved Case was transferred to the New Hampshire Supreme Court. (App 205-206).

This appeal was argued before the New Hampshire Supreme Court on January 8, 1965. Its decision was handed down on March 11, 1965, and petitioner's Motion for Rehearing was denied on April 13, 1965. (App. 207-226).

The petitioner then filed a Motion to Return and Suppress Evidence in the Superior Court on May 13, 1965, which was denied on May 14, 1965. (App. 227).

The petitioner's trial commenced on May 17, 1965, in the Superior Court of Hillsborough County, New Hampshire, and on June 22, 1965, the petitioner was convicted of murder. (App. 259-260).

Petitioner appealed his conviction and a Reserved Case was transferred to the New Hampshire Supreme Court. (App. 261).

The petitioner's exceptions were overruled on appeal by the New Hampshire Supreme Court. (App. 262-286).

A brief summary of the salient facts in this case will place the issues raised by petitioner in proper perspective.

The victim, Pamela Mason, was a 14-year-old girl. She left her home in Manchester, New Hampshire, about 6 p.m. on January 13, 1964, during a major storm with blizzard conditions, apparently responding to a man's telephone call for a babysitter. On January 21, 1964, eight days after she disappeared, her body was found on the west side of Interstate Highway 93, a modern, high-speed highway with an open median strip running south to eastern Massachusetts cities. The victim died from two to four hours after her last meal on January 13, 1964, from gunshot and knife wounds. (App. 262-266).

The following is a summary of the petitioner's activities on January 13, 1964, the day the victim was murdered, based upon the testimony presented at the trial:

- 2:00 - 2:30 p. m. Drove his bread truck into his yard at 312 Seames Drive, stayed home a short time and drove off. (Transcript of Trial, Vol. 5, p. 135)
- 4:05 p. m. Checked out of work at Cote Brother's Bakery. (Transcript of Trial, Vol. 6, p. 91)
- 3:30 - 4:30 p. m. Ferris Ebol saw petitioner in the Syrian American Club. (Transcript of Trial, Vol. 5, p. 169)
- 4:30 - 5:00 p. m. Purchased gas and dry gas at Somerville Street Garage. (Transcript of Trial, Vol. 5, pp. 165-167, 181, 201-205)

- 5:00 - 5:30 p. m. Home for five minutes at 312 Seames Drive. (Transcript of Trial, Vol. 5, pp. 135-136)
- 5:00 - 5:30 p. m. Habib Nassoura saw petitioner briefly at Syrian American Club and petitioner declined to play a game of gin rummey. Petitioner left the club. (Transcript of Trial, Vol. 5, pp. 177-178)
- 9:30 p. m. Mr. Gravel and Mr. Bushey stop near petitioner's car, the 1951 Pontiac which is parked in the northbound lane of Interstate 93 approximately opposite the place where Pamela Mason's body was found. (Transcript of Trial, Vol. 5, pp. 206-222, 224-242)
- 11:15 p. m. Arrived at his home, with his uniform pant legs wet up to the calf below the knee. (Transcript of Trial, Vol. 5, pp. 139-141)

The petitioner was employed by Cote Brothers Bakery as a route man. The evidence indicated he was absent from his home at 312 Seames Drive in Manchester between 5:30 and 11:15 p.m. He admitted that he had attempted following January 13, 1964, to establish an alibi for his whereabouts that night. (App. 263-264).

The following is a summary of the alibi evidence:

Tuesday, January 14, 1964 — John P. Arahovites was approached by the petitioner for an alibi for January 13, 1964. He agreed. (Transcript of Trial, Vol. 6, pp. 4-5)

Week of January 13, 1964 — Anthony F. Norcia was approached by the petitioner for an alibi for January 13, 1964. He refused to talk to the petitioner about it. (Transcript of Trial, Vol. 6, pp. 31-34)

Tuesday, January 21, 1964 — John P. Arahovites was again approached by the petitioner who stated: "Now I really need this alibi." This was at 2:00 p.m. that afternoon. The discovery of Pamela Mason's body was not reported to the police until after 3:00 p.m. that afternoon. Arahovites refused to go along this time. (Transcript of Trial, Vol. 6, pp. 6-10)

Wednesday, January 22, 1964

or Thursday, January 23, 1964 — Richard D. Loosian, owner of Syke's Variety was approached by the petitioner for an alibi for January 13, 1964. He agreed. (Transcript of Trial, Vol. 6, pp. 46-51)

Thursday, January 23, 1964 — Bernard Spero was approached by the petitioner for an alibi for January 13 1964. Spero did not give him a definite answer. This contact was made at the Primrose Market in Haverhill. The petitioner was not delivering bread there that day. (Transcript of Trial, Vol. 6, pp. 17-20)

Friday, January 24, 1964 — Bernard Spero was again approached by the petitioner for an alibi. They met at the Primrose Market and Spero told the petitioner he would have to think it over. The petitioner tried to see Spero that afternoon at Fantini's Bakery, but Spero would not see the petitioner and hid out on him in the cellar of the bakery. (Transcript of Trial, Vol. 6, pp. 21-26)

Friday, January 24, 1964 — Lawrence J. Pentaliros was approached by the petitioner in Plaistow, New Hampshire, for an alibi for January 13, 1964. He refused. (Transcript of Trial, Vol. 6, pp. 39-42)

Tuesday, January 26, 1964 — Mrs. Coolidge, the petitioner's wife, approached her next door neighbor, Mrs. Dorothy Maheu, and asked her to alibi for her husband between the hours of 5:00 and 7:00 p.m. on January 13, 1964. She refused. (Transcript of Trial, Vol. 12, pp. 283-284).

The respondent, State of New Hampshire, produced evidence that the fatal bullets were fired from petitioner's gun. It was established that petitioner owned more than one knife which could have inflicted the knife wounds, and that one of his knives was lost on the day that the victim disappeared and was found on the following morning, January 14, 1964, near a laundromat which the petitioner testified he had visited before going home at 11:15 p.m. the night of January 13, 1964. (App. 264).

During the trial the petitioner again objected to the admissibility of the evidence obtained pursuant to the search warrants, on constitutional grounds.

The New Hampshire Supreme Court ruled in *State v. Coolidge*, 106 N.H. 186 (App. 207-225) that, on its face, each of the challenged search warrants complied with the New Hampshire statutory requirements. It was further ruled that there was no evidence requiring a finding that the Attorney General could not perform, as a Justice of the Peace, the functions required of a "justice" under the applicable New Hampshire statute, or that he could not judge for himself the persuasiveness of the facts relied on to show probable cause or that he did not find probable cause from facts or circumstances presented to him under oath or affirmation by the chief of police.

The New Hampshire Supreme Court ruled that on a preliminary motion to suppress, the petitioner, as the moving party, had the burden of proving that the evidence was illegally obtained, and that the State was not required to disclose its entire case to prove that probable cause to issue the warrants existed.

Finally, the New Hampshire Supreme Court ruled, as follows:

"If at the trial the State offers evidence secured under these warrants and it is challenged, then, as stated in its brief, the State will have the burden of presenting evidence to the Trial Justice of facts in existence when the warrants were issued which established to the magistrate the probable cause upon which their issuance was based."

Evidence obtained under these warrants was offered by the respondent and challenged by petitioner during the trial. As a result, a hearing was held upon this issue without the jury being present. At this hearing the respondent, as stated in the New Hampshire Supreme Court opinion quoted above, had the burden of presenting evidence to the Trial Justice of facts in existence which established to the magistrate the probable cause upon which their issuance was based.

The respondent offered the testimony of one witness, Chief of Police, Francis P. McGranaghan, at this hearing. (Transcript of Trial, Vol. 6, pp. 182-227; App. 230-250).

Chief McGranaghan testified that in the afternoon of February 19, 1964, Assistant Chief Norman Leavitt returned to the Manchester Police Station from the University of Rhode Island Criminal Investigation Laboratory with a report that the ballistics experts there had informed him that the bullet which

killed Pamela Mason was fired from the Mossberg .22 rifle owned by the petitioner.

Chief McGranaghan then requested a meeting with the Attorney General that afternoon and went to Concord to confer with him. He took his subordinates with him, including Assistant Chief Leavitt, Captain John Stips and Lieutenant John Curran, as well as Captain Marchand of the State Police. The purpose of taking his subordinates was to go over with the Attorney General the evidence that had been gathered through the investigation in order to acquaint him with all the facts.

The meeting that afternoon took place in the Attorney General's Office and lasted for over two hours. Also present in addition to the Attorney General, William Maynard and the Police Chief's subordinate officers, were Assistant Attorneys General William O'Neil and Alexander Kalinski, and Colonel Joseph Regan and Captain John Conti of the New Hampshire State Police.

Chief McGranaghan brought the following facts and reports to the attention of the Attorney General that afternoon:

1. The ballistics information from the University of Rhode Island Criminal Investigation Laboratory that the petitioner's Mossberg .22 rifle fired the bullet which was found in the victim's brain.
2. The petitioner could not satisfactorily explain his absence from his home on the night of January 13th, between the hours of 5:00 p.m. and 11:00 p.m.
3. The petitioner's neighbor, Mrs. Maheu, saw him arrive at his home at 11:00 p.m. and go immediately into the bathroom.
4. The petitioner's vehicle, the 1951 Pontiac, was observed on the highway in the vicinity of where the body of Pamela Mason was found, at about 9:30 p.m. on the night she disappeared, January 13, 1964.
5. The facts concerning the many alibis that petitioner had given for his whereabouts on January 13, 1964 and that they were proven to be false.
6. The petitioner, by his own admission, had control of and owned the 1951 Pontiac on the night of January 13, 1964

and had admitted being on the highway that night near where the victim's body was found.

After relating these facts, Chief McGranaghan requested that the Attorney General issue an arrest warrant for the arrest of the petitioner and four search warrants to search petitioner's two automobiles, his home and his aunt's laundromat. The Chief stated he would be the complainant on these warrants.

Thereafter the Attorney General's Office prepared the complaints, and the Attorney General, acting as a Justice of the Peace, took Chief McGranaghan's oath to the search warrants.

At the conclusion of the hearing, the Trial Court ruled specifically that the evidence from the petitioner's Pontiac car, if offered by the State, would be admissible in evidence, thereby upholding the validity of the search warrant issued to search the Pontiac car. This was the only search warrant issue before the Trial Court during the trial.

The entire text of the Trial Court's ruling is set forth in the Appendix at pp. 250-252.

The second search and seizure issue raised by petitioner concerns the events which took place on Tuesday, January 28, 1964, and on Sunday, February 2, 1964.

On Tuesday, January 28, 1964, Officer Maurice Leclerc and Det. Sgt. Paul Doyon went to the home of the petitioner, Edward H. Coolidge, Jr., in the course of a routine investigation. Officer Leclerc testified that at this interview Coolidge was asked concerning his background and also concerning his activities on January 13, 1964. (App. 111).

During the course of the interview, Officer Leclerc and Det. Sgt. Doyon asked Coolidge about what firearms he owned, and Coolidge told them he owned certain firearms and brought out three firearms to show to them. Officer Leclerc testified that he listed these and they were:

- 1 Marlin 30-30 rifle
- 1 Mossberg Shotgun 410 Gauge
- 1 Remington Shotgun 16 Gauge (App. 111-112)

Mrs. Coolidge, when she testified, stated that she was present when her husband brought out the firearms, and that she saw her husband showing these firearms to the police on January 28, 1964. (App. 100).

Also at this interview Officer Leclerc and Det. Sgt. Doyon asked Coolidge if he would agree to take a lie detector test and he stated that he would be willing to do so. Coolidge further stated that he would prefer to take the test on a Sunday since that was one of his days off. (App. 112).

On this visit, Officer Leclerc and Det. Sgt. Doyon took no items of personal property from the petitioner, Coolidge, and Officer Leclerc testified that Coolidge was very cooperative during this interview, answered all questions, and voluntarily showed them his firearms. (App. 112). On this visit also, Officer Leclerc and Det. Sgt. Doyon made a brief search of Coolidge's two automobiles, with his permission and assistance. Officer Leclerc testified that after asking him for and obtaining Coolidge's permission the three of them went outside, and Coolidge assisted the officers in examining both of his automobiles, one of which was the 1951 Pontiac which was subsequently seized by the police at the time of his arrest. (Transcript of Trial, Vol. 4, p. 175).

On February 2, 1964, the following Sunday, Officer Leclerc called Coolidge at 8 o'clock in the morning with reference to Coolidge taking a lie detector test. As a result of this telephone conversation, an appointment was made for Coolidge to come to the Manchester Police Station at 1 o'clock that afternoon for the purpose of taking a lie detector test. (App. 112).

Coolidge arrived at the Manchester Police Station, according to the testimony of the officers, at approximately a quarter of one on February 2, 1964. After Coolidge arrived at the Manchester Police Station that afternoon, he stayed at the police station until a quarter of four, and during this time, Coolidge, Inspector Glennon and Officer Leclerc had discussions concerning the lie detector test and concerning his particular involvement in the case insofar as his being a suspect. (App. 24-28, 112-113).

Two police officers were sent to Mrs. Coolidge's home and Mrs. Coolidge came down to the Manchester Police Station and talked to her husband for approximately five minutes. After their brief conversation, Coolidge left for the State Police barracks in Concord with Officer Maurice Leclerc and Inspector Donald Glennon. (App. 27, 91-92, 113).

When they arrived in Concord, Coolidge left with Det. Sgt. William McBain for the purpose of taking a lie detector test.

Just prior to taking the test, Coolidge, in conversation with Det. Sgt. McBain, admitted to Det. Sgt. McBain that he had committed a larceny of approximately \$300 from his employer, Cote Brothers, Inc., in Manchester, at some previous date. (App. 28, 48).

After the lie detector test was finished, Det. Sgt. McBain called Officer Leclerc aside and told him about the fact that Coolidge had admitted committing a larceny. On the way back to Manchester in the police cruiser there was some discussion, according to the testimony, between Coolidge and Inspector Glennon about the larceny, but no further admissions by Coolidge concerning the larceny. (App. 29, 48, 113-114).

According to the testimony of Officer Leclerc and Inspector Glennon, they, along with Coolidge, arrived at the Manchester Police Station at around 7 o'clock in the evening on that Sunday, February 2, 1964. Officer Leclerc testified that he ordered some food for Coolidge and that Coolidge was fed a hot meal at that time. Officer Leclerc further testified that before leaving Concord he asked Coolidge if he wanted to stop in Concord to eat, but the petitioner, Coolidge, replied that he preferred to wait until they got back to Manchester. (App. 28-29, 113-114).

Officer Leclerc and Inspector Glennon both testified that they did not talk to Coolidge again concerning the larceny until 2 o'clock in the morning of the following day, Monday, February 3, 1964. They both testified further that the rest of the evening, from after the time they returned from Concord until 2 o'clock the next morning, they talked to Coolidge only about the Mason case. Coolidge was charged with the larceny at 2:30 in the morning on Monday, February 3, 1964 (App. 30-31, 114).

Inspector Donald Glennon testified that just before Coolidge was brought downstairs at the police station early Monday morning, February 3, 1964, to be booked for the larceny, he saw his guns and clothes and said something like "I see you have my guns and clothes." Inspector Glennon also testified that the following morning in the Clerk of Court's Office in Manchester Municipal Court, Coolidge offered to sell him one of the guns, a thirty-thirty. (App. 204).

At the Manchester Police Station that night Inspector Glennon testified that Coolidge was very cooperative and that Coolidge was free to come and go. It is also clear in his testimony

that during the course of that Sunday evening Coolidge at no time requested to leave. (App. 44, 46, 61).

At 10:30 o'clock that evening, Sunday, February 2, 1964, Inspector Donald Glennon and Det. Sgt. William McBain went to the home of Coolidge at 312 Seames Drive in Manchester for the purpose of talking to his wife, Mrs. Joanne Coolidge. They both testified that their main purpose in going to talk to Mrs. Coolidge was to discuss the Mason case with her and incidentally to check out one aspect of the larceny situation. (App. 33, 50).

The Superior Court found as a fact that at this time the police and investigating authorities had no knowledge of the exact calibre or type of weapon that they were looking for, it generally being the theory of the police at that time that the weapon might be a small hand gun or revolver. There was testimony that Inspector Glennon and Det. Sgt. McBain did not know at this time that Coolidge had any firearms. (App. 124-127, 200-201).

Inspector Glennon and Det. Sgt. McBain testified that insofar as they were aware at that time, they were not looking for rifles or shotguns and, in fact, were not looking for any specific weapons. They testified that they thought that they were looking for a small hand gun and at that time they were checking all firearms generally in the possession of people in the vicinity of Manchester. (App. 42, 56, 124-127).

According to their testimony, when they arrived at the Coolidge home that Sunday evening, Coolidge's mother, Mrs. Dorothy Coolidge, was there with his wife, Mrs. Joanne Coolidge. Shortly after they arrived, Mrs. Dorothy Coolidge, Coolidge's mother, left. Mrs. Dorothy Coolidge testified that she was told to leave and the testimony of Inspector Glennon and Det. Sgt. McBain on this point was that they did not directly ask Mrs. Coolidge to leave, but that they did suggest indirectly that they would prefer to talk to Mrs. Joanne Coolidge alone, and after the suggestion, Mrs. Dorothy Coolidge called her daughter and left. (App. 33-34, 38, 55-56, 58-59, 109-110.)

After Mrs. Dorothy Coolidge left, they talked to Mrs. Joanne Coolidge for approximately one-half to three-quarters of an hour. They testified that they were at the Coolidge home from about 10:30 o'clock that evening to about 11:15 p.m. They further testified that during most of this period they talked about the Mason case. (App. 33-36, 56).

Inspector Glennon and Det. Sgt. McBain testified that in the course of talking to Mrs. Joanne Coolidge that evening, they told her that they were checking firearms generally in the course of their investigation. They testified that when they mentioned this to Mrs. Joanne Coolidge, she told them that her husband had certain firearms and offered to show these firearms to them. They further testified that Mrs. Joanne Coolidge voluntarily turned these firearms over to them for examination, and according to them she stated: "We have nothing to hide." When Mrs. Coolidge testified, she admitted making this statement. (App. 42-43, 50, 102-103).

Mrs. Joanne Coolidge's testimony further corroborates the testimony of Inspector Glennon and Det. Sgt. McBain. On this point of the obtaining of Coolidge's firearms by Inspector Glennon and Det. Sgt. McBain on that evening, Mrs. Joanne Coolidge testified that she asked them if they wanted the guns and one said: "No", and the other said: "We had better take them." Mrs. Coolidge further testified concerning the firearms that she said that evening: "If you would like to take them it is all right." (App. 102).

The following excerpts from the testimony of Joanne Coolidge amplify this point:

Q. What else did they ask you about?

A. They asked if Ed had any rifles, and I said, 'Yes, he does.' *Then I asked if they would like to see them,* and they said, 'We will come with you.' (App. 93)

Q. And I suppose you know they were the same guns?

A. They asked if we had any firearms in the house. I guess they called them guns or rifles. I said, 'Yes'. I said, 'I will get them in the bedroom', and they said, 'We will come with you.' (App. 101)

Q. What did they actually say about taking the guns?

A. *I believe I asked if they wanted the guns.* One gentleman said, 'No': Then the other gentleman turned around and said, "We might as well take them". I said, *'If you would like them, you may take them.'* (App. 103).

According to the testimony developed at the hearing, the firearms were in the bedroom closet in the Coolidge home. Mrs.

Joanne Coolidge testified that she went into the bedroom, the police officers followed her, and she got the guns out of the closet and then handed them over to the police officers. (App. 94, 101).

Mrs. Coolidge also testified that during the course of this visit by Inspector Glennon and Det. Sgt. McBain, she gave them certain items of clothing, including a hunting jacket and a pair of her husband's work trousers. The officers gave her a receipt for these items and this receipt indicated what items they had taken. The trousers were in a hamper near the bedroom door leading from the hallway into the bedroom, and the hunting jacket was in a closet in the hallway, whereas the firearms were in the bedroom closet. (App. 94-95, 101, 102)

Petitioner's exceptions to the Trial Court's ruling admitting the evidence which he challenged on constitutional grounds, were saved and argued on appeal.

The New Hampshire Supreme Court confirmed its prior ruling and upheld the admissibility of the evidence which the petitioner had challenged. (App. 269-270).

SUMMARY OF ARGUMENT

I

The petitioner's brief takes the position that the Attorney General who issued the search warrants in this case in his capacity as a Justice of the Peace could not act as "a neutral and detached magistrate" simply because he was also the chief prosecutor in the case. Among the cases relied on is the case of *Aguilar v. Texas*, 378 U.S. 108.

Under New Hampshire law, a Justice of the Peace is a judicial officer, who is required to take an oath of office swearing to bear true faith and allegiance to the state and to support the constitution thereof.

The Trial Court upheld the validity of the search warrants and found that a neutral and detached magistrate would have found probable cause upon the facts presented to the Attorney General. The New Hampshire Supreme Court upheld this ruling.

An objective view of the facts indicates that the Attorney General did in fact act as a "neutral and detached magistrate" and not merely as a rubber stamp for the police. This is all that *Aguilar v. Texas*, supra, and the other cited cases require. The fact that all the evidence presented to the magistrate was not sworn to under oath does not invalidate the proceeding, under the law stated in *Aguilar v. Texas*, supra.

II

The seizure of petitioner's 1951 Pontiac automobile at his home on February 19, 1964 was incident to a lawful arrest.

At no stage in these proceedings has the petitioner challenged the validity of the arrest warrant issued against him on February 19, 1964 and executed on that date. It must be presumed that the arrest warrant was validly issued.

If the arrest of the petitioner was lawful, then the seizure of the petitioner's 1951 Pontiac automobile as an instrumentality of the crime, incident to the arrest, was also lawful. *Lefkowitz v. United States*, 285 U.S. 452; *United States v. Rabinowitz*, 339 U.S. 56.

III

The seizure of the petitioner's automobile was valid on the basis of probable cause alone.

When the police arrested the petitioner at his home on the evening of February 19, 1964, his 1951 Pontiac automobile was parked in the driveway outside of his home in a mobile condition. The police had probable cause to believe that the petitioner had murdered the victim and that his automobile was an instrumentality of the crime.

Under such circumstances, the probable cause alone was sufficient to justify the police seizure of petitioner's automobile. *Chambers v. Maroney*, 399 U.S. 42; *Carroll v. United States*, 267 U.S. 132; *Harris v. United States*, 390 U.S. 234.

IV

All that the police did by means of the vacuum sweepings, was to pick up, by means of the vacuum cleaner, items which

were in plain view in the automobile, namely the minute particles and other debris lying on the floor and on the upholstery in the automobile. *Weeks v. United States*, 232 U.S. 383; *Ker v. California*, 374 U.S. 23; *Harris v. United States*, 390 U.S. 234.

V

Lawful custody of the petitioner's automobile justifies searches and seizures of particles in the automobile within a warrant. *Cooper v. California*, 386 U.S. 58.

VI

There was no search and seizure of petitioner's personal possessions on February 2, 1964.

A fair reading of the evidence relating to the events which took place on February 2, 1964 clearly points to only one conclusion: the petitioner's guns and clothes were not obtained as the result of an unreasonable search and seizure. In fact, all the facts indicate that there was no search, legally or practically, and also that there was no seizure in the legal context of the Fourth Amendment. *Weeks v. United States*, 232 U.S. 383; *Hale v. Henkel*, 201 U.S. 43.

With respect to the wife's consent, insofar as that is an issue, this Court has never decided the question of the capacity of one spouse to authorize a consent search of the family dwelling that is valid against the other spouse. The issue was raised in two cases but not decided. *Amos v. United States*, 255 U.S. 313; *Henry v. Mississippi*, 379 U.S. 443.

It is generally held that the constitutional right to be free from unreasonable searches and seizures protects the possessory right and not legal title. This same rule should apply in the husband and wife situation. *Chapman v. United States*, 365 U.S. 10; *Stoner v. California*, 376 U.S. 483; *Frazier v. Cupp*, 394 U.S. 731.

ARGUMENT

The first argument in petitioner's brief contends that the admission into evidence of the petitioner's 1951 Pontiac auto-

mobile and of the articles obtained from this automobile (the vacuum sweepings), on and after February 19, 1964, violated his rights under the Fourth and Fourteenth Amendments because the search and seizure took place under search warrants that did not meet the constitutional requirements.

The fundamental issue raised by the petitioner's first argument is whether or not the petitioner's 1951 Pontiac automobile and the articles obtained from this automobile, the vacuum sweepings, were properly and lawfully admitted into evidence at petitioner's trial, consistent with his constitutional rights under the Fourth and Fourteenth Amendments.

The petitioner limits the consideration of this issue in his brief to the validity or invalidity of the search warrants issued in this case. The contention is made that the search and seizure took place under the authority of search warrants that did not meet constitutional requirements.

The invalidity of the search warrants in question, according to petitioner's argument, resulted from the fact that they were not issued by a neutral and detached magistrate, but instead were issued by the Attorney General in charge of the prosecution in his capacity as a Justice of the Peace, and also from the fact that the affidavit, on the basis of which the search warrants were issued, stated no facts from which an independent magistrate could make his own determination upon the question of probable cause.

It is the contention of the respondent that the petitioner's 1951 Pontiac automobile and the articles obtained from this automobile were lawfully obtained consistent with the petitioner's constitutional rights and were properly admitted into evidence.

There are three independent grounds upon which the seizure of petitioner's 1951 Pontiac automobile on February 19, 1964, and the subsequent searches of this automobile by police, can be upheld. They are:

1. The search warrants were lawfully issued and the automobile was properly seized as an instrumentality of the crime by police in the execution of the search warrants.
2. The petitioner was lawfully arrested on February 19, 1964 at his home and his 1951 Pontiac automobile was seized incident to a lawful arrest as an instrumentality of the crime.

3. The automobile was in plain view in front of the petitioner's house on the evening of February 19, 1964 when he was arrested, the automobile was mobile, and the police, having sufficient evidence in their possession to establish probable cause that petitioner's 1951 Pontiac was an instrumentality of the crime, had not only a right, but a duty to seize his automobile under such circumstances.

I

PETITIONER'S 1951 PONTIAC AUTOMOBILE AS INSTRUMENTALITY OF CRIME

On Sunday evening, February 2, 1964, Sgt. McBain and Inspector Glennon returned to the police station at around 11:30 p.m. from the petitioner's home, where they had learned from her that petitioner had not been home on the evening of January 13, 1964, the night the murder was committed. They then questioned the petitioner about his whereabouts on January 13, 1964 from 5:00 p.m. to 7:00 p.m. (Transcript of Trial, Vol. 5, pp. 66-67).

After telling the police officers that his automobile was stuck in the snow in the northbound lane of Interstate Route 93 just north of the Derry exit, he stated that when he freed himself, a station wagon stopped and offered assistance. He did not know the two occupants of the station wagon. He remembered that the station wagon had some orchestra advertising on the side. He recognized the passenger who spoke to him as a laundry or linen truck driver around Manchester. He said he got free and called his home telling his wife that he got stuck and that he would be home shortly. (Transcript of Trial, Vol. 5, pp. 22-23, 68-69, 195-196).

Gerald T. Gravel, Jr., worked for the Notre Dame Laundry for ten years prior to January, 1964. His laundry route took him up Seames Drive every day of the week past the defendant's house. (Transcript of Trial, Vol. 5, pp. 206-208).

On January 13, 1964, he left the Sacred Heart Hospital where he had visited his wife at eight-thirty in the evening with his

friend, Mr. Joseph Bushey, and together they drove to Derry, New Hampshire, on Interstate Route No. 93. (Transcript of Trial, Vol. 5, pp. 209-210).

They arrived at Derry, New Hampshire, at 9:00 p.m. The weather conditions were very bad, it was snowing and the roads were not plowed too well. They stayed in Derry ten minutes and while there picked up some musical instruments, guitars. They were in Mr. Bushey's automobile, a 1960 white, four-door Ford automobile. Mr. Bushey's car had a car rack about a foot high on its roof, on which was marked "The Blue Chords." They proceeded to drive back to Manchester by way of Interstate Route No. 93 again. (Transcript of Trial, Vol. 5, pp. 211-214).

After they passed Route 28, they saw a car stalled by the side of the road. They stopped in front of the stalled car, backed up and asked the driver if he had any trouble with his car. The driver replied that he didn't. The car was parked in the break down lane. (Transcript of Trial, Vol. 5, p. 216).

Mr. Gravel testified that a man was the driver of the car and all he could see was his profile. The car that the man was in was a two door Pontiac with a sun visor covering the windshield. (Transcript of Trial, Vol. 5, p. 217).

Mr. Gravel sometime later was shown a 1951 Pontiac with a visor at the Manchester Police Station and he testified that it was the same car he saw on the highway that night. (Transcript of Trial, Vol. 5, pp. 222).

Mr. Gravel did not recognize the man in the car. The man opened his window about three-quarters of the way down, and kept looking straight ahead as he answered Mr. Gravel's questions. He did not turn his head to speak at all. (Transcript of Trial, Vol. 5, pp. 217-218).

The road had been plowed where the 1951 Pontiac was stopped and it was not stuck in the snow. Its windshield wipers were running and its motor running. It was parked about ten inches from the guardrail post at the edge of the road. (Transcript of Trial, Vol. 5, p. 220).

Mr. Gravel got home at 10:30 p. m. that night. (Transcript of Trial, Vol. 5, p. 219).

The testimony of Mr. Joseph A. Bushey corroborated the testimony of Mr. Gravel. Mr. Bushey fixed the time that they

stopped next to the 1951 Pontiac at about 9:30 p.m. that evening. (Transcript of Trial, Vol. 5, p. 224-242).

The defendant told police that he got stuck in the snow on Interstate 93 north of the Derry turnoff and a car stopped to help him. He said he recognized the fellow who asked him if he needed any help as a linen or laundry truck driver in Manchester. He identified the car which the fellow was in as having advertising on it of an orchestra. (App. p. 264-265).

The body of the victim, Pamela Mason, was discovered alongside the southbound lane of Interstate Route 93 on January 21, 1964, approximately opposite from where the petitioner was parked in the northbound lane of Interstate Route 93 on the night of the murder, January 13, 1964. (Transcript of Trial, Vol. 2, pp. 6-7).

Pamela Mason was picked up at her home on the evening of January 13, 1964, just shortly after 6 p.m., ostensibly to go on a baby-sitting job in response to a telephone call from a man. (Transcript of Trial, Vol. 1, pp. 135, 137, 138, 189-192).

The time of death of the victim was fixed by medical testimony at from two to four hours after her disappearance on January 13, 1964, making it between 8 o'clock and 10 o'clock that evening. (Transcript of Trial, Vol. 3, p. 177; Vol. 4, p. 20).

The bullets taken from the skull of the victim were identified by four firearms identification experts as having been fired by petitioner's .22 Mossberg rifle, State's Exhibit 53. (Transcript of Trial, Vol. 6, pp. 148-150; Vol. 7, pp. 66-68, pp. 105-107; Vol. 8, pp. 212, 213, 215-216).

To summarize the above evidence, the police knew at the time of petitioner's arrest:

1. The victim, Pamela Mason, was picked up at her home by someone ostensibly to go on a baby-sitting job, on the evening of January 13, 1964 at about 6 p.m.
2. The victim's body was discovered by the side of the road in a snowbank west of the southbound lane of Interstate 93 on January 21, 1964, eight days after she disappeared, six-tenths of a mile north of the Londonderry, New Hampshire line.
3. The victim's time of death was fixed by medical testimony at between 8 and 10 o'clock on the evening of January 13, 1964.

4. The petitioner's 1951 Pontiac automobile was seen parked by the side of the road in the northbound lane of Interstate 93 at approximately 9:30 p.m. on January 13, 1964 with the petitioner in it, within the time span when the victim was murdered, and at a point approximately opposite where the victim's body was found.
5. The bullets taken from the skull of the victim were identified by four firearms identification experts as having been fired by petitioner's .22 Mossberg rifle.

The above facts, all within the knowledge of the police on February 19, 1964, clearly established probable cause for the police to believe that the petitioner's 1951 Pontiac automobile was an *instrumentality of the crime*. *United States v. Sconfienza*, 309 F. Supp. 322; *United States v. Doyle*, 373 F. 2d 875; *Harris v. Stephens*, 361 F. 2d 888; *Johnson v. State*, 238 Md. 528, 209 A. 2d 765; *State v. McCoy*, 249 Or. 160, 437 P. 2d 734.

It is clear, from a recitation of the above facts, that "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." *Brinegar v. United States*, 338 U.S. 160; *Henry v. United States*, 361 U.S. 98; *Beck v. Ohio*, 379 U.S. 89; *Draper v. U.S.*, 358 U.S. 307.

II

THE SEARCH WARRANTS WERE LAWFULLY ISSUED AND WERE VALID

Relying on *Mancusi v. DeForte*, 392 U.S. 364, and the related cases of *Johnson v. United States*, 333 U.S. 10; *Giordonello v. United States*, 357 U.S. 480; and *Aguilar v. Texas*, 378 U.S. 108, the petitioner's brief takes the position that the Attorney General who issued the search warrants in his case in his capacity as a Justice of the Peace could not act as a "neutral and detached magistrate" simply because he was also the chief prosecutor in the case.

Petitioner's contention ignores the realities of the factual circumstances involved and relying on the form of what happened, denies the substance of the proceeding.

The fact that the Attorney General was acting as a Justice of the Peace when he issued the search warrants is not purely a formal circumstance which is constitutionally irrelevant within the factual framework of this case, as contended by petitioner's brief.

Under New Hampshire law, a Justice of the Peace is a judicial officer, who is required to take an oath of office swearing to bear true faith and allegiance to the state and to support the constitution thereof. *Golding's Petition*, 57 N.H. 146; *N.H. Constitution*, Part 2, Articles 75 and 84. The New Hampshire Constitution has a prohibition against unreasonable searches and seizures similar to the provisions of the Fourth Amendment. *N.H. Constitution*, Part 1, Article 19, (App. p. 212).

The real issue raised by petitioner's brief on this point is whether or not the petitioner's constitutional rights under the Fourth and Fourteenth Amendments were denied to him by the procedure followed and by the manner in which the search warrants were issued in this case.

Very relevant to the determination of this issue is the ruling of the Trial Court, affirmed by the New Hampshire Supreme Court, that any neutral and detached magistrate would have found probable cause under these factual circumstances. The Trial Court, in its ruling upholding the validity of the issuance of the search warrants, made the following specific finding:

"... a neutral and detached magistrate, having this evidence presented to him, whether under oath or not, would have been persuaded that there was probable cause for the arrest of Edward Coolidge for the murder of Pamela Mason; and that there was probable cause for the issuance of the warrants as issued. . ." (App. 251).

The New Hampshire Supreme Court upheld this ruling by the Trial Court as follows:

"The circumstances surrounding the issuance of the warrant were fully explored at the trial in the absence of the jury. The Court's findings and ruling that the evidence presented to the magistrate was based upon reliable information and warranted

his finding of probable cause, are sustained. The record shows that the magistrate was fully informed as to *'the facts relied upon by the complaining officer to show probable cause, ...'* (App. 269).

The fact that the Trial Court, in addition to the ruling referred to above, also made a comment by way of colloquy about the Attorney General wearing two hats is not relevant to a determination of this issue.

In analyzing the cases relied upon in petitioner's brief on this point, it is evident that what this Court has previously ruled is simply that *before a search warrant may issue, a magistrate must find probable cause on the basis of adequate facts presented to him by the police officer seeking its issuance*. Otherwise, the magistrate would be acting *merely as a rubber stamp for the police*, and would therefore not be acting *as a detached and neutral magistrate*.

As the evidence indicates in this case confirmed by the Trial Court's ruling, the Attorney General was not acting merely as a rubber stamp for the police when he issued the search warrants on February 19, 1964. Chief McGranaghan presented all of the underlying facts and circumstances to the Attorney General before swearing to the complaint under oath on the basis of which the search and arrest warrants were issued.

It is submitted that when Chief McGranaghan swore to the complaint under oath before the Attorney General, he, in effect, incorporated by reference into the complaint all of these facts and circumstances which he had previously related to the Attorney General.

A foot note in *Aguilar v. Texas*, supra, supports the above position. The footnote states as follows:

"The record does not reveal, nor is it claimed, that any other information was brought to the attention of the Justice of the Peace. It is elementary that in passing on the validity of a warrant, the reviewing court may consider only information brought to the magistrate's attention."

Aguilar v. Texas, supra, is cited by the petitioner in his brief to support the position that the search warrants in this case were illegal solely because they were issued by a Justice of the Peace who was also the Attorney General who was in charge

of the investigation of the crime involved. *Aguilar v. Texas*, supra, does not support such a conclusion or suggestion.

As the above quotations clearly indicate, all that the *Aguilar v. Texas*, supra, does state is that the magistrate, to whom application is made for a search warrant, whether he is a Justice of the Peace who is an Attorney General, or any other Justice of the Peace, must act as a "neutral and detached magistrate" in that his finding of probable cause must be based upon his own judgment on the facts and evidence and underlying circumstances presented to him, and that he must be persuaded by these facts and underlying circumstances that probable cause exists for the issuance of the warrants. If the magistrate merely accepts the *statement* of the complainant that probable cause exists without inquiring into the facts and underlying circumstances, then he is not acting as a neutral and detached magistrate. That is all that *Aguilar v. Texas*, supra, stands for.

Aguilar v. Texas, supra, does not hold that merely because a man wear two hats, or wears two pair of shoes as the Trial Court stated, one as a Justice of the Peace and the other as an Attorney General, he will not do his constitutional duty as a Justice of the Peace when an application for a search warrant is presented to him because he also happens to be the Attorney General directly interested in the solution of the crime with which the application for a search warrant is concerned.

The mere fact that all of the facts and circumstances presented to the Attorney General by Chief McGranaghan were not also written down and specifically sworn to under oath would not invalidate the search warrants which were issued. Nor was the procedure used to obtain these warrants defective.

The New Hampshire Supreme Court approved the procedure followed in this case, in its opinion in the case of *State v. Titus*, 106 N.H. 219 (1965), in which the validity of a search warrant issued under similar circumstances was challenged.

The Court stated in its opinion, as follows:

"Under our practice, the evidence relied upon by an officer or magistrate to justify issuance of the search warrant is not required to be fully contained in the complaint upon which the warrant is issued. The allegation of the complaint may be supplemented by other evidence presented with it. *State v. Coolidge*, 106 N.H. 186. The issue of probable cause in such

a case, may be determined on the basis of all the evidence presented to the magistrate. . . . As was said in *United States v. Ventresca*, supra: ' . . . affidavits for search warrants . . . must be tested and interpreted by magistrates and courts in a realistic fashion. A grudging . . . attitude . . . towards warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting.' "

In two federal cases, the procedure followed in this case was also approved by the Courts.

In the case of *Lopez v. United States*, 370 F. 2d 8, the defendant challenged the validity of the search warrant which resulted in the seizure of incriminating evidence against him. The defendant was charged with narcotics violations. The affidavit, on the basis of which the magistrate found probable cause and issued the search warrant, did not have sufficient facts set forth in it to justify the issuance of the search warrant. However, the police officer who applied for the search warrant made oral statements to the magistrate with more information than the affidavits contained. These oral statements were made before the complaining officer swore to the affidavit. The Court held this procedure to be proper and valid and stated as follows:

"In reviewing the validity of a search warrant, this Court is limited to a consideration of the same information that was brought to the magistrate's attention. While it is doubtful that the affidavit, based largely upon hearsay, *alone* could have supported a finding of probable cause, we are of the opinion, and so hold, that the information obtained through 'further investigation', and brought to the magistrate in the form of oral statements made by the complaining officer, *together with* that contained in his affidavit, satisfies the legal requirements. . . . Appellant's contention that probable cause was not established, because the statements of Officer Barba to the magistrate were not under oath, it without merit. *It is of no consequence that the oath was taken after the statements were made, rather than before.*"

In the case of *Miller v. Sigler*, 353 F. 2d 424, the defendant was also convicted of a narcotics violation on the basis of evidence seized pursuant to a search warrant. The affidavit upon the basis of which the search warrant was issued was insufficient. Again, however, the complaining officer orally informed the magistrate who issued the search warrant of additional facts which, to-

gether with the affidavit, established probable cause. The Court upheld the validity of the search warrant.

The Court stated:

"Petitioner's main claim is that the affidavit and the statement of Officer McAdams to the magistrate is not enough evidence to support a finding of probable cause to issue the search warrant. The District Court held that the affidavit in support of the application was insufficient on its face to support the warrant. There is no doubt that this holding is correct. *Aguilar v. State of Texas*, supra, condemned the issuance of a warrant on the basis of an affidavit more complete than the one herein. This mere recital by Officer McAdams that he had received information that narcotics were being possessed or sold on the described premises is surely not sufficient evidence to allow the magistrate to make the required independent determination of probable cause. Before a search warrant may issue two steps must be taken. The application must be supported by 'Oath or affirmation, . . . describing the place to be searched, and the persons or things to be seized.' Next, the Fourth Amendment requires a showing of 'probable cause.' Even though the affidavit of the officer is not constitutionally sufficient, in itself, to support a finding of probable cause, it nonetheless fills the requirements of a proper 'Oath or affirmation' describing the place to be searched and the thing to be seized. In addition, it can be considered some evidence to support a finding of the necessary probable cause. *Aguilar v. State of Texas*, supra, however, demands something more than this bare affidavit. The 'something more' was supplied by Officer McAdams in his statement to the magistrate that he personally observed the odor of marijuana outside of the described premises. We feel as did the trial court, that this information before the magistrate justified the issuance of the search warrant. When this information is coupled with the affidavit indicating that the officer has additional outside information, presumable from an informer, there can be no doubt but that sufficient probable cause exists to issue the warrant."

Petitioner's brief states that the case of *Mancusi v. DeForte*, supra, governs the instant case. In that case a district attorney issued a subpoena which was used to seize certain records. This Court ruled that even if the subpoena were treated as a search

warrant it was invalid because the district attorney was not a neutral and detached magistrate.

The *Mancusi* case is distinguishable on its facts from the present case. The district attorney, in that case had no judicial authorization to act. The Attorney General in this case acted in his judicial capacity as a Justice of the Peace. The ruling of the Trial Court, upheld by the New Hampshire Supreme Court, that any Justice of the Peace, upon having presented to him the facts which were presented to the Attorney General, would have found probable cause for the issuance of the warrants, substantiates the fact that the Attorney General did act as a "neutral and detached magistrate" in issuing the warrants. It is manifestly clear that the Attorney General did not merely rubber stamp the actions of the police, but did, in fact, make an objective judicial determination as to the existence of probable cause on the basis of the facts presented to him. Under these circumstances, the holding of the *Mancusi v. DeForte*, supra, does not apply.

It is submitted, therefore, that the issuance of the search warrants by the Attorney General in this case was proper and valid when all the pertinent facts and circumstances have been considered and reviewed in the light of the constitutional and legal principles which apply.

III

THE SEIZURE OF PETITIONER'S AUTOMOBILE WAS INCIDENT TO A LAWFUL ARREST

The petitioner was arrested at his home on February 19, 1964, at 7:40 p.m. His two automobiles were parked outside of his home at the time of his arrest. They were impounded about an hour to an hour and a half after the petitioner's arrest, after a wrecker got there to tow them to the police garage. (App. 77-78).

Initially, it should be noted that petitioner, at no stage of these proceedings, has ever challenged the validity of the arrest warrant issued against him on February 19, 1964, and executed

on that date. (Exhibit E, App. 165-170). It must be presumed, therefore, that the arrest warrant was validly issued. *Anderson v. State*, 192 Wis. 352, 212 N.W. 628; *People v. Hall*, 8 Cal Rptr. 760, 186 C. A. 2d 388.

Under the prior decisions of this Court, the petitioner is foreclosed from raising the issue of the validity of the arrest warrant on this appeal since he failed to raise it at any time during the prior proceedings. *United States v. Atkinson*, 297 U.S. 157; *McGrath v. Manufacturer's Trust Co.*, 338 U.S. 241; *Walters v. City of St. Louis, Mo.*, 347 U.S. 231.

Under such circumstances, there is no issue as to the validity of the arrest warrant and the arrest of the petitioner on February 19, 1964, and it must be presumed, therefore, that his arrest was lawful.

In any event, the facts which were presented to the Attorney General in his capacity as a Justice of the Peace, as set forth in the Statement of this brief, were more than adequate to form a foundation for persuading him to find probable cause for the issuance of an arrest warrant to arrest the petitioner for the murder of the victim, Pamela Mason. The Trial Court so ruled. (App. 251). As noted, the Trial Court's ruling on this point was not raised during the appeal before the New Hampshire Supreme Court after petitioner's trial.

If the arrest of petitioner was lawful, then the seizure of the petitioner's 1951 Pontiac as an instrumentality of the crime, incident to the arrest, was also lawful. *Lefkowitz v. United States*, 285 U.S. 452; *United States v. Rabinowitz*, 339 U.S. 56.

The respondent does not claim that the searches of petitioner's 1951 Pontiac on February 21, 1964, and on the subsequent dates were incident to a lawful arrest as suggested in petitioner's brief. The respondent does contend, however, that the seizure of the petitioner's 1951 Pontiac was incident to a lawful arrest and that police custody of it thereafter was lawful.

The validity of the searches of petitioner's 1951 Pontiac after it came into police custody will be discussed later in this brief.

IV

THE SEIZURE OF PETITIONER'S AUTOMOBILE WAS
VALID ON BASIS OF PROBABLE CAUSE ALONE

When the police arrested the petitioner at his home on the evening of February 19, 1964, his 1951 Pontiac automobile was parked in the driveway outside his home in plain view. The automobile was in a mobile condition.

At the time of petitioner's arrest, the police officer had sufficient evidence and knowledge of facts to establish probable cause that the petitioner had murdered the victim, Pamela Mason, and that petitioner's 1951 Pontiac automobile was an instrumentality of the crime.

Under such factual circumstances, the police had not only a right, but also a duty to seize the petitioner's 1951 Pontiac automobile, just as much as they would if it were the murder weapon itself lying in the driveway instead of an automobile which was an instrumentality of the crime.

Under such circumstances, the probable cause alone was sufficient to justify the police seizure of petitioner's 1951 Pontiac automobile. *Chambers v. Maroney*, 399 U.S. 42; *Carroll v. United States*, 267 U.S. 132; *Harris v. United States* 390 U.S. 234.

The validity or invalidity of the arrest warrant under such circumstances is immaterial.

The police conduct on this point, without regard to the validity or invalidity of either the search warrant or the arrest warrant, was proper. It was their duty to seize the petitioner's automobile under such circumstances, and having done so, it would be illogical and unrealistic to hold that this police conduct deprived the petitioner of any constitutional rights under the Fourth and Fourteenth Amendments.

V

VACUUM SWEEPINGS OF PETITIONER'S AUTOMOBILE
LEGALLY WERE NOT SEARCHES AND SEIZURES

After the police impounded petitioner's 1951 Pontiac automobile on February 19, 1964, and had, as respondent contends, lawful custody of such automobile, vacuum sweepings were made of the interior of the automobile on February 21, 1964, February 24, 1964, January 4, 1965 and April 10, 1965. (App. 269).

Respondent contends that, legally, such vacuum sweepings, did not amount to searches and seizures. It is contended that, in effect, all that the police did by means of the vacuum sweepings, was to pick up, by means of the vacuum cleaner, items which were in plain view in the automobile, namely the minute particles and other debris lying on the floor and on the upholstery in the automobile. *Weeks v. United States*, 232 U.S. 383; *Ker v. California*, 374 U.S. 23; *Harris v. United States*, 390 U.S. 234.

Upon analysis, the police in this case did nothing different from what the police did in the case of *Harris v. United States*, supra. This Court, stated in that case, as it has repeatedly held before:

"... objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence."

In *Harris v. United States*, supra, which involved a robbery, the defendant's car was seen leaving the scene of a robbery. The defendant was arrested several hours later as he was getting into the car in front of his home. The defendant was arrested at 1:30 p.m. and the car was not towed to the police station lot until 3 p.m. The towing driver told the arresting officer that although it was raining and the windows of the car were down, he had not rolled them up because he did not want to disturb any fingerprints. The arresting officer immediately went out to inventory the contents in the interior of the car, as required by his police department regulations, and also to roll up the windows of the car because it was raining. After completing the in-

ventory, and as he was rolling up a window on the passenger side of the car, he found a card which had been lost from the wallet of the robbery victim.

One of the questions raised upon appeal after the defendant's conviction for robbery was whether or not the officer had made a search of the defendant's car in doing what he did. This Court ruled that no search took place since the card which was seized was in open view.

VI

LAWFUL CUSTODY OF PETITIONER'S AUTOMOBILE JUSTIFIES SEARCHES AND SEIZURES OF PARTICLES IN AUTOMOBILE WITHOUT WARRANT

Even if it could be held that the vacuum sweepings of petitioner's 1951 Pontiac automobile were in fact searches and seizures, such searches and seizures were lawful and valid since the police had lawful custody of the automobile at the time. *Cooper v. California*, 386 U.S. 58.

In *Cooper v. California*, supra, the defendant was arrested on a narcotics offense and his car was impounded in the police garage and held for forfeiture proceedings. A week after the defendant's arrest, the impounded car was searched and in the glove compartment evidence was found which was later introduced at the trial of the defendant on the charge of selling heroin.

This Court found the search reasonable, and held that no error was committed in its introduction in evidence although it had been found in a search that was remote both in time and place from the arrest. It was stated in that case, distinguishing the case of *Preston v. United States*, 376 U.S. 364, as follows:

"The fact that the police had custody of Preston's car was totally unrelated to the vagrancy charge for which they arrested him. So was their subsequent search of the car. This case is neither Preston nor controlled by it. Here the officers seized petitioner's car because they were required to do so by state law. *They seized it because of the crime for which they*

arrested the petitioner. They seized it to impound it and they had to keep it until forfeiture proceedings were concluded. Their subsequent search of the car — whether the state had "legal title" to it or not — was closely related to the reason petitioner was arrested, the reason his car had been impounded, and the reason it had been retained. . . ."

The following cases involve the principle stated in *Cooper v. California*, supra, that lawful custody of a vehicle justifies its search without a warrant at any time, if the search is closely related to the reason for defendant's arrest and to the reason the vehicle was impounded and retained.

In the case of *United States v. Sconfienza*, 309 F. Supp. 322, (1970), the defendant and two others were observed by a police officer using binoculars stealing two white cartons and a sack out of a railway office and placing them in the trunk and one of the cartons in the rear of a black Buick car. The defendant then alone drove the car away from the railway office. The police officer who observed this notified a patrol car in the area through radio of what he observed, and the patrol car stopped the defendant just off the railroad property and arrested him.

As the police were arresting him, one of them observed a portion of one white carton in the back seat of the car partially covered by a blanket, but in plain view.

The police officers, without searching the car or seizing any items from it, took the defendant in the patrol car to the police station where his pockets were emptied. One officer took the defendant's car keys, which had been in his pocket, and returned to the defendant's car.

The officer drove the car back to the police station, where it was then searched by the police, both the back seat area and the trunk, and without a search warrant. Two white cartons and the bag, which were stolen goods, were found therein. The time between the arrest and the search was about 10 minutes at most.

The defendant moved to suppress this evidence on the ground that, although there was probable cause for his arrest and thus a search without a warrant could be justified as incident to his arrest, the search, coming when it did, was not in fact incident to his arrest, relying on *Preston v. United States*, 376 U.S. 364.

The Court, relying on *Cooper v. California*, supra, denied his

motion to suppress this evidence, and after distinguishing *Preston v. United States*, supra, held:

"With ample ground to believe that the car was an instrumentality used during the robbery, there was a sufficient connection to justify a reasonable search a few minutes later at the stationhouse only three blocks from the place of arrest. Even if this was not the case, *the inspection of the car could be considered as an examination by the police of a vehicle lawfully seized.*"

In the case of *United States v. Doyle*, 373 F. 2d 875 (1967), the defendant entered a bank, held up the employees and made off with \$4200 of the funds of the bank, driving away in a black Falcon. As a result of diligent police work, defendant was arrested at his home within 10 minutes of the robbery. At the time of his arrest, the black Falcon was parked in the driveway. The police, after arresting the defendant, searched the car and found among other items of incriminating evidence connecting defendant with the robbery, a paper bag containing \$4200 in United States currency. Defendant was convicted of armed robbery.

On appeal, the defendant contended that the search of his automobile without a warrant was illegal since it took place after he was under arrest and in custody of the police. The Court upheld his conviction and held:

"The search of the black Falcon was substantially contemporaneous with the arrest. The car was in Doyle's immediate presence and but a few feet from him when he was handcuffed and taken into custody. *Indeed the car was itself an instrumentality of the crime.* Judge Mishler's finding that there was "abundant proof of probable cause" and that the search was reasonable is overwhelmingly supported by the evidence in the record before us. The fact that a search warrant might have been obtained is not a controlling factor. *Ker v. State of California*, 374 U.S. 23, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963). Under the circumstances of this case it was more important to make the search at once in order to pursue effectively and promptly the necessary investigation into the details of the robbery, the existence of collaborators or accomplices and the identity of witnesses. It was also proper to attempt to find at the earliest possible moment the pistol used in the hold-up."

In the case of *Harris v. Stephens*, 361 F. 2d 888 (1966), cert. denied, 386 U.S. 964, the two defendants were charged with rape and convicted. In this case, the victim had been picked up by the two defendants in an automobile and driven to the place where she was raped by them. On the day after the crime, the victim was taken by the sheriff to the home of the defendant Trotter, where the automobile was identified by the victim's escort. The automobile was still warm and stains were noticed on the upholstery. The defendant, Trotter, came to the door wearing bloodstained shorts. The sheriff arrested Trotter and had him drive his automobile to the jail.

The sheriff then went to defendant Harris' home and questioned him. Upon receiving an unsatisfactory explanation from Harris as to his whereabouts, the sheriff asked to see the clothes Harris had worn. Harris' clothes were stained with blood and the victim's wrist watch was found in his billfold. The sheriff then arrested defendant Harris.

On appeal the defendants contended that the officers had no probable cause for arrest and consequently the search and seizure of certain articles were illegal. The Court upheld the convictions, ruled that there was probable cause for the arrest of the defendants and stated:

"Since the arrests were lawful, the search and seizure incident thereto were likewise proper. The articles were discovered and seized contemporaneously with the arrests. It was also proper for the arresting officers to thoroughly search Trotter's automobile after apprehending Harris. They had previously noticed stains on the upholstery and had Trotter drive the car to the jail. The car was an instrument used in the commission of the crime. Shortly after Harris was arrested and brought to jail, the search of Trotter's car was continued. By daylight the stained upholstery was much more obvious. The search of the automobile was also incident to the arrest."

In *Johnston v. State*, 238 Md. 528, 209 A. 2d 765, another rape case involving the use of an automobile, on the day of the arrest, the victim's coat and purse were removed from the trunk of the automobile after it was towed to the police station and after the defendants were under arrest. Three days later sweepings and dust samples were taken from the automobile by another officer. All of these articles were admitted as evidence at defendants' trial over their objections.

On appeal, their contention that these articles were obtained by an unlawful search and seizure was rejected, and their convictions were upheld. The Court stated:

"Where there has been a valid arrest, property found in connection with the arrest which tends to establish the commission of the crime charged may be held by the officers for evidence. If the arrest is lawful, the seizure is lawful, if the property is of an evidentiary nature.

... The automobile itself could have been offered in evidence at the trial. Having lawfully seized it, the police had the right to examine it after the seizure for evidence in connection with the crime. In any event, the sweepings and dust samples were introduced to show that Mrs. Haymaker was in the car and to place the car at the scene of the alleged rape. The appellant Johnson testified that Mrs. Haymaker was in the car and his statement was not contradicted; there was voluminous other evidence that the car was at the place described."

In the case of *State v. McCoy*, 249 Or. 160, 437 P. 2d 734 (1968), the defendant was convicted of the crime of rape. The defendant lured the victim into his automobile, drove her out into the country and raped her in the automobile. The police arrested defendant at his place of business upon an arrest warrant. At the time of his arrest, his automobile was parked in the street about ten feet from his shop. The defendant was driven to the police station in the police car and his car was towed to the police station and searched there without a warrant. In the car the police found human hair like that of the victim, and a rag with semen on it which the victim said the defendant used to wipe himself with after he raped her.

The Trial Court denied defendant's motion to suppress this evidence, contending that search of his automobile and seizure of the evidence were without a warrant and in violation of his constitutional rights. On appeal, the Court upheld the denial of defendant's motion to suppress. The Court, stated in part as follows, relying on *Cooper v. California*, *supra*,

"Here the officers took custody of the automobile as an instrumentality of the crime, as evidence (photographs of it were introduced in evidence without objection on the trial) and to search it for incriminating evidence of the crime for which the defendant was arrested, and which the officers had

reasonable cause to believe the automobile might contain. There can be no question about the officers' good faith, no room for a contention that there "conduct was inconsistent with their declared purpose"; *Harris v. United States*, supra, 331 U.S. at 153, 67 S. Ct. at 1103. Assuming they had time to secure a search warrant, they were not bound to do so, "because the search was otherwise reasonable": *United States v. Rabinowitz*, supra, 339 U.S. at 64, 70 S. Ct. at 434.

In view of the nature of the crime charged, to vacuum the car was reasonably considered an essential part of the search — not to have done so might, indeed, have been dereliction of police duty. A vacuum cleaner, it is true, might have been brought to the scene of the seizure for that purpose, but we think this was not required. To tow the car away from a city street was a proper precaution to "insure against any third party's tampering with the evidence," . . . and afforded the officers "better conditions for the search."

. . . The automobile, as we have said, was not only evidence, but, as well, an instrumentality of the crime. . .

As such the automobile was subject to seizure and, being in plain sight, no search for it was required."

In *People v. Webb*, 66 Cal. 2d 107, 424 P 2d 342, involved was a search made after the automobile was in police custody without a warrant. The Court upheld the search and stated:

"A search is now permissible without a warrant if the vehicle is in valid police custody. The search was, therefore, proper under *Cooper*, supra."

VII

THERE WAS NO SEARCH AND SEIZURE OF PETITIONER'S PERSONAL POSSESSIONS ON

FEBRUARY 2, 1964

The second argument in petitioner's brief assumes that the events which took place at his home on February 2, 1964, when two police officers obtained his rifles and clothes, amounted to an unlawful search and seizure. The petitioner's argument then

revolves around the question of whether or not a wife can acquiesce in the search and seizure of her husband's personal effects in a criminal investigation in keeping with the requirements of the Fourth Amendment.

The second issue does not need to be reached until the first one is decided. If there was no search and seizure in the first instance, then there is no constitutional issue to be decided and the Fourth Amendment does not apply.

A fair reading of the evidence relating to events which took place on February 2, 1964, clearly points to only one conclusion: the petitioner's guns and clothes were not obtained as the result of an unreasonable search and seizure. In fact, all the facts indicate that there was no search, legally or practically, and also that there was no seizure in the legal context of the Fourth Amendment.

The evidence substantiates the following salient facts:

1. On February 2, 1964, the petitioner was certainly not a prime suspect in connection with the crime which the police were investigating and perhaps, not even a suspect at all.
2. At the time the police were conducting a very general investigation of the Mason murder, and were questioning many people. From time to time the police had taken various weapons, with the consent of the people, to be examined. (App. 202-204).
3. On the evening of February 2, 1964, the petitioner saw his firearms at the Manchester Police Station after they had been brought to the station by two police officers.
4. On the next morning, February 3, 1964, the petitioner offered to sell one of his firearms to Inspector Glennon.
5. Although the petitioner was free on bail, from February 3, 1964 to February 19, 1964, and was represented by counsel during that period of time, he neither requested nor demanded the return of his firearms and clothes from the police.
6. The entire evidence relating to the events of February 2, 1964, taken in context, points to one inescapable conclusion: there was no search of petitioner's premises and

no constitutionally prohibited seizure of his firearms and clothes.

7. There is not even the slightest inference of fraud, intimidation, coercion or any other unlawful action by the police officers on that date.

The facts, as fully set forth in the statement of this brief, clearly indicate that the petitioner's clothes and guns were freely and voluntarily given to the police by the petitioner's wife. The New Hampshire Supreme Court so ruled in 106 N.H. 186, (App. 207-225) as follows:

"On the facts and circumstances of this case it is our opinion that the four guns and certain objects of defendant's clothing obtained from his residence on the night of February 2, 1964, by officers McBain and Glennon were not secured by search and seizure. On the contrary they were voluntarily shown and given to them by Mrs. Coolidge without coercion on their part and were taken away by the officers with her consent. . ."

The evidence adduced at the hearing upon Coolidge's Petition to Quash fully justifies this ruling. The evidence establishes quite clearly that:

1. There was no search of the petitioner's home on February 2, 1964 by Inspector Donald Glennon and Det. Sgt. William McBain.
2. The items of personal property obtained from the petitioner's home on February 2, 1964, were voluntarily given to Inspector Glennon and Det. Sgt. McBain by Mrs. Joanne Coolidge, the wife of the petitioner, with a statement by Mrs. Coolidge to the effect: "We have nothing to hide."

There is no conflict in the testimony on these two points. The police officers testified to the above two points and their testimony was corroborated and substantiated by Mrs. Joanne Coolidge, the wife of the petitioner. In fact, Mrs. Coolidge even amplified the testimony of the police officers in some respect on a few minor points. An example of this is her testimony that when she asked the officers if they wished to take the firearms, one replied: "No", and the other answered: "We'd better take them."

Also, it is interesting to note that in turning these items of personal property over to the police officers that night, Mrs. Coolidge was doing nothing more than her husband had already done on the previous Tuesday, January 28, 1964, when Officer Maurice Leclerc and Det. Sgt. Paul Doyon talked with him at their home and in her presence. At that time, Officer Leclerc and Det. Sgt. Doyon both testified that Coolidge was very cooperative, answered all of their questions, showed them his firearms, agreed to take a lie detector test, and gave them permission and assisted them in searching his two automobiles. Certainly this conduct on her husband's part on Tuesday, January 28, 1964, gave her every reason for believing they had nothing to hide and for answering the question of Inspector Glennon and Det. Sgt. McBain and for her offering to them and turning over to them certain items of personal property in the house, as well as allowing them to search their two automobiles.

Another important point to note is that Inspector Glennon and Det. Sgt. McBain did not go to the petitioner's home on that Sunday evening for the purpose of obtaining any items of personal property. From their testimony it is clear that they were there for another purpose and not for the purpose of obtaining any property of any kind. They testified that they went to see Mrs. Coolidge that night primarily to talk to her about the Mason case in relation to her husband's activities on the night of January 13, 1964. It was only after conversation with her *and after she offered to turn over certain items of personal property* to them that they did take certain items of personal property from her.

It is particularly obvious from the testimony of Inspector Glennon and Det. Sgt. McBain that they were not at the Coolidge home that evening for the purpose of searching for or taking any firearms, since they testified that at that point in the investigation they were not looking for any particular type of firearm but were checking firearms generally, that they thought they were looking for a small hand gun, and that they did not even know Coolidge owned any firearms before they went there that night. Their obtaining the petitioner's firearms that evening was only an incidental result of their going there for an entirely different purpose and a direct result of an offer by Coolidge's wife to turn these firearms over to them.

The term "search" has a particular meaning in this context of "search and seizure". It is defined in Volume 79 of *Corpus Juris Secundum*, under the topic "Searches and Seizures", at pages 775 and 776, as follows:

"The term 'search' as applied to searches and seizures, is an examination of a man's house or other buildings or premises, or of his person with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged. As used in this connection the term implies some exploratory investigation, or an invasion and quest, a looking for or seeking out. The quest may be secret, intrusive, or accomplished by force, and it has been held that a search implies some sort of force, either actual or constructive, much or little. A search implies a prying into hidden places for that which is concealed and that the object searched for has been hidden or intentionally put out of the way. While it has been said that ordinarily searching is a function of sight, it is generally held that the mere looking at that which is open to view is not a 'search'."

A search in the constitutional sense "ordinarily implies a quest by an officer of the law" for some object. *Weeks v. United States*, 232 U.S. 383.

In the case of *Hale v. Henkel*, 201 U.S. 43, this Court defines a "search" as follows:

"A 'search' ordinarily implies a quest by an officer of the law and a seizure contemplates a forcible dispossession of the owner."

This definition of the term "search" as set forth in *Corpus Juris Secundum* and as defined by this Court in the *Hale* case has been followed and adopted by many state court decisions, and by the decisions of the lower federal appeal courts. See: *State v. Morris*, S.C., 133 SE 2d, 744, 748; and *U.S. v. Cook*, D.C. Tenn. 213 F. Supp. 568, 571.

The case of *U.S. ex rel Stacey v. Pate*, 324 F. 2d 934, 935 is particularly pertinent since it is somewhat analogous to the facts as presented in this case. Petitioner therein was convicted of murder and sentenced and after exhausting state remedies, filed a petition for writ of habeas corpus which was dismissed and this

appeal followed. The facts were briefly that a woman was found stabbed to death in her apartment in Chicago and the police arrested petitioner that same evening without a warrant. Early the following morning at the police station, petitioner was requested to remove his shirt and the officer noted a spot on his T-shirt which appeared to be blood. The officer said he was going to petitioner's house to see about the shirt he had been wearing the previous day and the petitioner said: "Go ahead." Two officers then appeared at petitioner's house and questioned his wife about the shirt he had worn the previous day and asked her to produce it. She then gave them the blood-stained shirt. Petitioner confessed to the murder when confronted with the shirt. In affirming the lower court's decision the court held at page 935:

"Upon a review of all the evidence we think petitioner's contention that the blood-stained shirt was obtained by an unlawful search of his house has no merit. Police officers went to the premises where incriminating evidence was found and were voluntarily given the shirt. Their action did not constitute a search. It is of no consequence that the person who gave the police the blood-stained shirt was petitioner's wife. . . . Petitioner's privacy was not invaded. There was no inspection or examination of his household. Under these circumstances, we hold there was no search either in an actual or legal sense."

The facts in testimony, when viewed in the light of the above definitions, indicate that no "search" of the petitioner's premises was made by Inspector Glennon and Det. Sgt. McBain on Sunday evening, February 2, 1964. There was no examination at all of his home by them that evening. There was no exploratory investigation on their part, no invasion and quest, and no looking for and no seeking out. There was no implication of force, either actual or constructive, on their part. In short, there was no "search" but only a voluntary offer by Mrs. Coolidge to turn over certain items of personal property, which they accepted.

A fair reading of the evidence indicates that the only thing that happened at the petitioner's home on Sunday evening, February 2, 1964, when petitioner was in the police station, is that his wife *voluntarily* turned over to the policemen who called upon her the petitioner's guns and some of his clothes.

From the testimony, it is evident and obvious that the police were not there to pick up anything belonging to the petitioner.

The fact that they did obtain petitioner's guns and clothes was an incidental by-product of their visit there to discuss petitioner's activities on the night of January 13, 1964 with petitioner's wife. It was only after her offer to turn over the guns had been rejected by one officer, that the other officer accepted and offered to take them.

It should be remembered that in the eyes of the police at this time petitioner was not even a prime suspect at all. The police were conducting a very general investigation at this time into the murder of the victim, Pamela Mason. What took place at the petitioner's home that evening was only a small part of the overall police investigation going on at the time. Many people were being questioned by the police at this time. Many other weapons had been turned over to the police for testing.

The only fact the police had in their possession about the petitioner at this time was that he was not at home on the evening of the murder from 5:30 p.m. to 11:15 p.m. This alone was hardly enough to make the petitioner a prime suspect in the case or even a suspect at all for that matter.

Since petitioner had agreed to take a lie detector test, he came voluntarily to the police station that Sunday and took the test. After taking the test, the police naturally asked him about his whereabouts on the night the victim was murdered. Technically, petitioner was not in police custody that Sunday nor was he being detained against his wishes.

Since petitioner kept giving different versions that day to the police about his whereabouts on the night of the victim's disappearance, the police very naturally pursued this matter with him until they had completed it. This was normal police work and was not unusual at all.

During the course of the lie detector test petitioner admitted a larceny he had committed. This was a voluntary admission on his part, and obviously the police were not going to overlook this. Outside of this, however, the petitioner was free to go if he wished.

At no time that Sunday did petitioner protest and ask to leave the police station. The police did not mistreat the petitioner in any way. They did not coerce him, trick him or abuse him in any way whatsoever, mentally or physically. He was fed and

he was not uncomfortable in any way. Petitioner could have stopped talking to the police at any time. The fact that he did not indicates to some extent that he must have felt that there was some advantage for him to keep talking.

After petitioner admitted the larceny, the police did not discuss this with him further until they arrested him at 2 a.m. the next morning.

In short, all the events which took place on Sunday, February 2, 1964, both at the police station and at petitioner's home, were nothing more or nothing less than routine police work being carried out in an attempt to solve a very heinous crime, the brutal murder of a 14 year-old girl.

It is within this factual framework that the petitioner is challenging what happened as being a violation of his constitutional rights under the Fourth and Fourteenth Amendments.

Petitioner's brief undertakes a long and elaborate analysis of cases involving the conduct of a wife turning over to police personal effects of her husband in a criminal investigation.

Underlying the analysis in petitioner's brief of these cases is the basic assumption that the activities of the police on Sunday, February 2, 1964 amounted to a "search and seizure" of the petitioner's personal effects, both factually and legally.

The basis for this assumption is a further assumption not warranted in the least by a fair reading of the evidence: that although the presence of the police in petitioner's living room or kitchen was not unlawful, however, "*an unlawful search and seizure surely began when the officers demanded any guns belonging to the petitioner.*" (Petitioner's Brief, p. 20)

The petitioner is apparently unwilling to accept the facts as they occurred. The police made no demands whatsoever on this visit. The assumption made by petitioner's brief that the evidence indicates a *demand* by police for petitioner's guns, is an obvious misconception of the uncontradicted testimony on this point. The misconception in petitioner's brief somehow serves to transform the activities of the police at petitioner's home on the evening of February 2, 1964 into an *unlawful search and seizure*.

This transformation then further serves as a foundation upon which petitioner's brief builds an imposing and ornate legal edifice which explores the legal proposition of the right of a wife

to cast away a husband's constitutional rights under the Fourth Amendment. The petitioner's brief then extensively explores the highways and byways of the legal proposition of whether proof of a wife's acquiescence *in the search and seizure of her husband's personal effects in a criminal investigation* in which he but not she is involved is enough to satisfy the Fourth Amendment.

The imposing and rambling legal edifice constructed by petitioner's brief on this point shrinks into an ineffectual exercise in legal semantics if the fundamental premise *of an unlawful search and seizure* is unwarranted by the facts. The respondent submits that this is so.

Without belaboring the facts concerning the events of February 2, 1964, one inescapable conclusion emerges: In showing the police the petitioner's guns and clothes, his wife was only doing what he had previously done on the evening of January 28, 1964 when two other police officers questioned him at his home. On that occasion, he also voluntarily showed the police his guns, was cooperative, answered all of their questions and even assisted them in searching his vehicles parked outside of his home. The effect of this activity by petitioner on his wife was obvious. It can be summed up by stating that his actions indicated to his wife that he had nothing to hide.

Under such circumstances, it can be reasonably argued that petitioner, by his actions on January 28, 1964, gave *tacit consent* to his wife to do what she did on the evening of February 2, 1964, in handing over petitioner's guns and clothes to the police. It is significant, in this analysis, to note that the petitioner's wife, in handing over the guns to the police that evening stated: "*We have nothing to hide.*"

On the basis of what had previously occurred, petitioner's wife was acting reasonably in doing what she did.

Factually, there was no search here. There was no "quest" by police here and they did not pry or search petitioner's premises in any way on February 2, 1964. They accepted only what was given to them by petitioner's wife. Legally, this could not rise to the level of what is commonly understood as a "search" in this area of constitutional law.

Also, factually, although there was a *taking* here by the police of petitioner's personal effects, the real question is whether, *legally*, this resulted in a constitutionally prohibited seizure.

Respondent submits that both factually and legally, *there was no search for and there was no seizure of petitioner's personal effects* by the police on February 2, 1964.

The real issue at this point then, as respondent views the situation reduces itself to this: In a constitutional sense, do the events which occurred on February 2, 1964 amount to an unreasonable search and seizure of petitioner's personal effects in violation of his rights under the Fourth and Fourteenth Amendments. It is submitted that they do not.

Even if the facts indicated a search and seizure in this case, which they do not, then, it is submitted that, in such a case, this Court should uphold the validity of such a taking on the basis of the wife's voluntary consent.

This Court has never decided the question of the capacity of one spouse to authorize a consent search of the family dwelling that is valid against the other spouse. The issue was raised in two cases but not decided. *Amos v. United States*, 255 U.S. 313; *Henry v. Mississippi*, 379 U.S. 443.

In cases involving a consent situation, the general rule appears to be that a valid consent to search premises can be given only by a person who has an immediate and present right to possess these premises. If he consents, the search is valid as to any person against whom evidence is found. It is generally held that the constitutional right to be free from unreasonable searches and seizures protects the possessory right and not legal title. *Chapman v. United States*, 365 U.S. 10; *Stoner v. California*, 376 U.S. 483; *Frazier v. Cupp*, 394 U.S. 731.

In the husband and wife situation, and in related family situations, the lower Federal courts, have generally upheld such searches upon the same rationale, namely, the protection of the possessory right and not legal title. *Roberts v. United States*, 332 F. 2d 892; *Stein v. United States*, 166 F. 2d 851; *United States v. Sergio*, 21 F. Supp. 553; *United States v. Sferas*, 210 F. 2d. 69; *United States v. Stone*, 401 F. 2d 32; *Maxwell v. Stevens*, 348 F. 2d 325.

In the case of *United States v. Alloway*, 397 F. 2d 110, the defendant was convicted of armed robbery of a Federal Savings and Loan Association. He appealed and the Court of Appeals held that the voluntary consent of a defendant's wife to the taking of two dark suits from the defendant's house trailer validated the seizure of the suits and their use as evidence at the trial where it was testified that the robber had worn a dark suit. The Court stated:

"It has been held that voluntary consent by a wife or other relative may, under proper facts, support a search that turns up evidence of an accused's criminal conduct. . . . We hold that in the factual context of this case, the wife's consent made lawful the seizure of the suits and their use as evidence. The search was reasonable."

In the case of *United States v. Retolaza*, 398 F. 2d 235, the defendant was also charged with bank robbery. He was found guilty and appealed. The Court of Appeals held that there was no search within constitutional prohibition, where officers, with an arrest warrant were admitted to the defendant's apartment by his wife to confirm that he was not there. While there, the wife voluntarily produced and turned over the money taken in the robbery and a gun. The Court stated:

"Undoubtedly Mrs. Retolaza was at a psychological disadvantage during this interview, especially when she had concealed beneath a sofa cushion a loaded shotgun where she was sitting, the existence of which she earlier denied. We cannot say, however, that her will was so overpowered that her production of the money and the gun were rendered involuntary acts on her part so as to constitute their production an illegal search and seizure. She was not under arrest or threatened with arrest. It was she who identified what incriminating articles were secreted on the premises and it was she who produced them. . . . We find no illegal search and seizure."

The recent case of *Frazier v. Cupp*, supra, decided by this Court, stands for the same principle. In this case admitted into evidence was some clothing which officers had seized from the petitioner's dufflebag which he and Rawls had used jointly and which the officers had found during the search conducted with Rawls' consent. The petitioner was convicted and the State Supreme Court affirmed. The petitioner thereafter filed a petition

for a writ of habeas corpus in the district court which granted the writ. The Court of Appeals reversed.

The petitioner claimed that the prosecutor's use of the clothing amounted to an illegal search and seizure in violation of the Fourth and Fourteenth Amendment rights. The Court held the clothing from the petitioner's dufflebag was found in the course of a lawful search since Rawls, a joint user of the bag, had authority to consent to its search. The Court stated as follows:

"Petitioner's final contention can be dismissed rather quickly. He argues that the trial judge erred in permitting some clothing seized from petitioner's dufflebag to be introduced into evidence. The dufflebag was being used jointly by petitioner and his cousin Rawls and it had been left in Rawls' home. The police, while arresting Rawls, asked him if they could have his clothing. They were directed to the dufflebag and both Rawls and his mother consented to its search. During this search the officers came upon petitioner's clothing and it was seized as well. Since Rawls was a joint user of the bag, he clearly had authority to consent to its search. The officers therefore found evidence against petitioner while in the course of an otherwise lawful search. Under this Court's past decisions, they were clearly permitted to seize it. . . . Petitioner argues that Rawls only had actual permission to use one compartment of the bag and that he had no authority to consent to a search of the other compartments. We will not, however, engage in such metaphysical subtleties in judging the efficacy of Rawls' consent. Petitioner, in allowing Rawls to use the bag, and in leaving it in his house, must be taken to have assumed the risk that Rawls would allow someone else to look inside. We find no valid search and seizure claim in this case."

Viewed in this light, the second argument in petitioner's brief is an exercise in metaphysical subtleties and should be rejected.

CONCLUSION

The judgment of the Supreme Court of New Hampshire should be upheld for the foregoing reasons.

Respectfully submitted,

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No. 323

EDWARD H. COOLIDGE, JR.

Petitioner.

THE STATE OF NEW HAMPSHIRE,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF NEW HAMPSHIRE

REPLY BRIEF FOR PETITIONER

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

No. 323

EDWARD H. COOLIDGE, JR.,
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v.

THE STATE OF NEW HAMPSHIRE,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF NEW HAMPSHIRE

REPLY BRIEF FOR PETITIONER

In our opening brief we showed that the microscopic particles taken from petitioner's Pontiac automobile for use as evidence of guilt were obtained by an unconstitutional search and seizure because the warrant under which the search was conducted was issued by the Attorney General while in active charge of the investigation and subsequent prosecution instead of by detached and neutral magistrate as required by the Fourth and Fourteenth Amendments. The constitutionality of such a warrant was the issue litigated below and decided—wrongly, in our submission—by the New Hampshire courts.

In this Court the State has now offered a grab bag of contentions to justify the search for evidence in the auto-

mobile even if there was no validity to the warrant under which the search was actually made (Br. pp. 26-35). The Manchester police acted under the warrant. They never faced the question whether there was an exigency that gave probable cause for a search in the absence of a warrant; or, if they did face the question, they must have decided there was no exigency for they took time to seek the warrant. The New Hampshire courts have never inquired into whether there was factual justification for a search without warrant. The State's present, belated contentions ought not to be open here.

Even if open, the State's new theories are without merit.

1. The contention that the seizure of the Pontiac automobile was incident to the arrest of petitioner (Br. 26-27) is unsupportable because petitioner had been arrested and gaoled an hour and a half or two hours before the seizure occurred (App. 77-78, 256-257). In *Preston v. United States*, 376 U.S. 364, 366, 367, the Court unanimously held—

Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest.

No distinction can be made in this regard between a warrantless search and a warrantless seizure. The rule stated in *Preston* has been consistently affirmed. *Cooper v. California*, 386 U.S. 58, 59; *Dyke v. Taylor Implement Co.*, 391 U.S. 216, 220; *Chambers v. Maroney*, 399 U.S. 42, 47.

2. *Chambers v. Maroney*, 399 U.S. 42, holds only that when law enforcement officers have probable cause to stop a motor vehicle on the highway shortly after a crime, to arrest the occupants and to search the vehicle, then they may constitutionally postpone the search until the suspects have been detained in the police station and the car taken to a safer place. The relevant conditions on the privilege are not satisfied in the present case. Here, in contradistinction to *Chambers*, the vehicle was not moving on the highway but in the owner's driveway; it was not, by any

stretch of the imagination, being used to commit or flee from a crime; petitioner was not arrested in or near the car; and an immediate search for evidence in the car on petitioner's premises would have been just as unconstitutional as the search actually made two days after the car had been seized.

The most important of these distinctions, we submit, is that the present case does not fit under the exception from the usual requirement of a search warrant established by the line of authorities stemming from *Carroll v. United States*, 267 U.S. 132. It is one thing to stop the driver of a vehicle in a public place upon probable cause to believe that it then was being used by the driver in a criminal enterprise. It is quite another to go to his home to make a general search of his car in his absence, even when possessed of probable cause. *Carroll* held only that where there is probable cause to believe that a car travelling on the highway is being used to transport contraband, law enforcement officers may stop the vehicle and conduct a search without obtaining a search warrant. The reason for the exception to the general rule requiring a search warrant is plain enough. A moving vehicle will have passed on before a warrant can be obtained. The very fact that vehicle is travelling on the highway in a probably unlawful journey or in flight is itself an exigency demonstrating the impracticability of securing a magistrate's order. No such exigency exists when the police are concerned with the contents of an automobile lawfully parked beside the owner's house in his own driveway with not the slightest reason to believe that the vehicle will be removed.

Later cases adhere to this rationale. In *Brinegar v. United States*, 338 U.S. 160, 164, the Court said—

The *Carroll* decision held that, under the Fourth Amendment, a valid search of a vehicle *moving on a public highway* may be had without a warrant, but only if probable cause for the search exists. [Emphasis added.]

The underlying reasoning was summarized in last Term's decision in *Chambers v. Maroney*, 399 U.S. 42, 51—

Carroll, *supra*, holds a search warrant unnecessary where there is probable cause to search an automobile *stopped on the highway*; the car is movable, the occupants are alerted, and the car's contents may never be found if a warrant must be obtained. Hence an immediate search is constitutionally permissible. [Emphasis supplied.]

In *Chambers* the automobile was a "fleeting target" being used, as the police had probable cause to believe, to carry the armed robbers, their loot and their weapons from the scene of a crime.

We are not concerned in the present case with the two day delay in searching petitioner's Pontiac after it was seized. Here, in contradistinction to *Chambers*, the police could not have constitutionally searched the Pontiac without a warrant in the beginning. To extend *Carroll* and *Chambers* to every search for evidence in an automobile, even when parked in the owner's absence in his driveway or garage, would dangerously impair the present rule requiring law enforcement officials to obtain a detached and neutral judgment on the question of probable cause unless they can demonstrate special need for exemption. *Chimel v. California*, 395 U.S. 752, 762; *Katz v. United States*, 389 U.S. 347, 356-358; *Warden v. Hayden*, 387 U.S. 294, 299. When a car is resting on the owner's property, there is no sound basis for distinguishing a search for evidence among its contents from a search for evidence in an office, tool shed or garage. The owner has as much reason to expect privacy for the content of one as for the other. The car may be moved more easily than the building, but it is scarcely easier to move evidence already in an automobile than it is to take damaging evidence in the office, tool shed or garage and carry it away in the owner's car. Surely this Court is not about to hold that a warrant is not required to search for evidence that can easily be carried in an available car.

3. The State also contends (Br. p. 28) that since petitioner's automobile was visible from the highway, the police could constitutionally seize it; and that the police having thus impounded the automobile were authorized to search it at any time while it was in their custody. There are three short answers.

(a) The cases permitting seizure of contraband in plain view of the police¹ do not extend to entering private property for the purpose of searching out without a valid warrant the unknown contents of a large and visible container like an automobile. Indeed, no decision of this Court reaches even close to the seizure of an article for purposes of inspection merely because it happens to be visible from a public way.

(b) The Manchester police were concerned with the contents of the automobile, not with the vehicle itself. The search and seizure were conducted under the invalid warrant. The warrant (App. 146-147, 149) described the car as the locus of articles for which the police were to search, viz—

certain objects and things used in the Commission of said offense, now kept, and concealed in or upon a certain vehicle, to wit: 1951 Pontiac two-door sedan, Green, N.H. Regis. No. IG 719, Serial No. F 605270 3, to wit: objects described on attached list and that the same may be removed before night-day.

The automobile was not listed. The return (App. 152-153) also made it plain that the police were looking only for things in the car, viz—

INVENTORY

Vacuum sweepings from floor mats, seat cushions,
an[d] trunk mats

¹E.g., *Hester v. United States*, 265 U.S. 57; *United States v. Lee*, 274 U.S. 559; *Ker v. California*, 374 U.S. 23, 42-43.

Carborundum honing stone with reddish stains,
boxed

Yellow towel, stained

(c) The evidence taken from the car and introduced at the trial was microscopic particles obtained with a vacuum cleaner. The police were conducting a general and highly intensive search for evidence. They had no knowledge of what they wanted, except possible evidence of guilt. There is no resemblance between this kind of systematic combing of a vehicle for what may turn up and the casual discovery in *Harris v. United States*, 390 U.S. 234, of a visible card while rolling up a window for the protection of the vehicle itself.

The Manchester police set out to search petitioner's Pontiac for evidence described in the warrant issued by the Attorney General (App. 141-144). They found none of the articles specifically described (Compare App. 142 with App. 145) but conducted a general search with a vacuum cleaner in hope of obtaining some kind of evidence. If the warrant was invalid, the general search inside the Pontiac cannot be sustained by pointing out that it was visible from the street any more successfully than the State could uphold the search of a building on the ground that it was visible to the public. The unauthorized invasion of a private place by law enforcement officers cannot be excused merely by

saying that they could see the outside and had probable cause to believe that it had been used in the commission of a crime.

Respectfully submitted,

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Supreme Court, U.S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1970

No. 323

EDWARD H. COOLIDGE, JR.,
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v.

THE STATE OF NEW HAMPSHIRE,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF NEW HAMPSHIRE

**PETITION OF THE STATE OF NEW HAMPSHIRE
FOR REHEARING**

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OF THE STATE OF NEW HAMPSHIRE

**PETITION OF THE STATE OF NEW HAMPSHIRE
FOR REHEARING**

On June 21, 1971, the Court decided this case. The judgment of the court below, sustaining the conviction of petitioner Coolidge for first degree murder, was reversed and the case ordered remanded to the Supreme Court of New Hampshire. Now the State of New Hampshire prays that rehearing be ordered.

The Court's reversal of the Supreme Court of New Hampshire expressly presupposes not only that the search warrant in question was constitutionally insufficient but also that the search was invalid in the absence of a warrant. Consideration of the particular rules for judging the seizure and search as

warrantless is contained in parts II A-C of the opinion of the Court by Mr. Justice Stewart. Beyond their significance for this case, these portions of the opinion are of immediate practical importance for the administration of the law of search and seizure by law enforcement officials, for they concern the criteria by which the constitutional need for warrants is to be judged. There are sharp disagreements within the Court with respect to the meaning of *Chambers v. Maroney*, 399 U.S. 42 (1970), and the substance of the plain view doctrine, dealt with, respectively, in parts II B and C of the opinion. Only four members of the Court joined in these parts of the opinion. Mr. Justice Harlan, the fifth member of the Court necessary for the result reached, did not concur in these portions of the opinion. The footnote to Mr. Justice Harlan's concurring opinion suggests, further, that he would have joined with the four dissenting justices in affirming the conviction, had he applied the holding of *Williams v. United States*, ____ U.S. ____ (1971), with the agreement of five justices of the Court, that *Chimel v. California*, 395 U.S. 752 (1969), is not retroactive. And with respect to the continued application of the exclusionary rule against the states in search and seizure cases, Mr. Justice Harlan expressed the view that *Mapp v. Ohio*, 367 U.S. 643 (1961), and *Ker. v. California*, 374 U.S. 23 (1963), should be overruled.

Thus, the judgment below is reversed, though the following conclusions are true.

(A) Less than a majority agree on those points of law which are most crucial to this case and most significant for determining and judging state and federal action in the future. In the context of the disagreement within the Court, those portions of the Court's opinion which represent only the views of a plurality cannot furnish reliable guides for the future.

(B) In order to concur in the present judgment of the

Court, the fifth justice must decline to apply a recent holding of the Court.

(C) That same justice calls for an end to the application of the exclusionary rule against the states, the necessary presupposition of the reversal presently rendered in this case. Hence, a majority of the Court individually favor rules under which the judgment of the Court should be opposite to what it now is.

It is submitted that in these circumstances the result presently reached by the Court should not stand, and that a rehearing should be granted to provide the following means of reaching a different result.

1. We respectfully submit that Mr. Justice Harlan should join with the present four dissenters on the grounds (a) that the Court has held that *Chimel v. California*, 395 U.S. 752 (1969), is not to be applied retroactively and (b) that under pre-*Chimel* law the seizure in question was valid. While this course would not settle disagreement over the holding of *Chambers v. Maroney*, 399 U.S. 42 (1970), or over the content of the plain view doctrine, it would be action consistent with the holding of the Court in *Williams v. United States* ____U.S.____ (1971), it would produce the result which Mr. Justice Harlan and the four dissenting justices ideally favor, and it would avoid what we submit is presently an unnecessary reversal in a very serious case. This action could not result in any weakening of rules applicable against federal officers, because it would be grounded on what is already the holding in *Williams v. United States*, *supra*, on the subject of retroactivity. In so urging Mr. Justice Harlan to apply the holding in *Williams v. United States*, *supra*, it is submitted that we urge that justice to do as he has done in applying *Mapp v. Ohio*, 367 U.S. 643 (1961), despite his views at the time its rule was adopted and despite his present position on the undesirability of that rule. And it is submitted that we urge

no more than that justice has imposed upon himself in finding that he was not "... free to decide the present cases consistently with [his] ... own views ... which have not commended themselves to most ... members of the Court. *Mackey v. United States*, ____ U.S. ____ (1971), Harlan, J., concurring and dissenting (p. 11 of preliminary print).

2. We respectfully submit that Mr. Justice Harlan should join with the present dissenters from the plurality view either of the holding of *Chambers v. Maroney*, 399 U.S. 42 (1970), or of the content of the plain view doctrine. It is submitted that those justices are correct who have dissented in this case from the plurality portions of the opinion, either on the ground that the seizure and search were valid under the rule in *Chambers* or on the ground that the discussion of the plain view doctrine does not rightly conceive the law of the past and unsettles the law for the future. The doubt which surrounds these points as a result of the present division over the plurality portions II B and C of the Court's opinion is detrimental to the practical action which law enforcement officers and state and lower courts must take. To clarify either of them would help to settle the law for the future with very practical significance for both federal and state action. If *Mapp v. Ohio*, 367 U.S. 643 (1961), is not now to be overruled, the issues on these disputed points cannot be avoided. And to join with present dissenters on these points would, again, avoid what five members of the Court presently believe to be an ultimately unnecessary reversal of a state judgment.

3. We respectfully submit that the Court should choose on rehearing that very course of action which Mr. Justice Harlan advocates in his concurring opinion: the overruling of *Mapp v. Ohio*, *supra*, and *Ker v. California*, 374 U.S. 23 (1963). We do not take lightly, in raising this possibility, the dissenting opinion of Mr. Chief Justice Burger in *Bivens*

v. *Six Unknown Federal Narcotics Agents*, —U.S.— (1971), in which he proposes that a new alternative to the suppression doctrine be developed before the doctrine is abandoned. And we are mindful that no majority of the Court has declared in favor of abandoning the doctrine. But we urge for reasons given below that as to state cases the doctrine be abandoned now.

As applied against the states, the exclusionary rule is constitutionally infirm. While the Court in *Mapp v. Ohio*, 367, U.S. 643 (1961), rested its application of the rule to the states on constitutional authority, it was only 12 years before, in *Wolf v. Colorado*, 338 U.S. 25 (1949), that it had been held that the Fourteenth Amendment did not forbid the introduction of evidence taken in violation of it. Today there is no unanimity of opinion, as opinions in this case demonstrate. The constitutional basis for the rule is thus not immune from re-examination and clarification.

Such a constitutional posture invites consideration of reasons for and against the continued application of the rule against the states. We will not belabor now what the Court well knows, that recent writing on measurable effects of the rule are available for the Court's consideration. But we would emphasize one point for which the very opinions of this Court since *Mapp v. Ohio*, *supra*, are evidence.

Judgments about the constitutional standards applicable to state searches and seizures are judgments which must be made by law enforcement officers who are not lawyers and who are called upon to take action without the luxury of time for extended reflection. These officers cannot successfully, or reasonably, be called upon to apply rules of law which are so complicated as to require subtle legal analysis or so subject to disagreement over content as to destine the results of analysis to doubt. We raise these twin spectres not for the sake of polemic but as a preface to a conclusion to be drawn below from the disagreement within the Court itself.

We ask the Court to consider the disagreement in *Spinelli v. United States*, 393 U.S. 410 (1969), between Mr. Justice Harlan and Mr. Justice Black. This disagreement concerned the content of the relevant law before *Spinelli*; it was not confined to disagreement over what the law should be. The same kind of disagreement can be seen in the present case, as opinions now stand, between Mr. Justice Stewart and Mr. Justice Black over the content of the rules as to search and seizure incident to arrest before and after *Chimel v. California*, 395 U.S. 752 (1969), over the holding in *Chambers v. Maroney*, 399 U.S. 42 (1970), and over the content of the plain view doctrine. Each of these examples illustrates disagreement over what the law is, quite apart from any disagreement over what the law ought to be. What is primarily significant in each instance is not the relative merits of opposing positions but the very existence of such disagreement within the Court over the legal facts of what the law is or has been.

With great respect, we are bound to submit that these illustrative disagreements within the Court indicate the absence of sufficiently clear rules to be applied successfully in the context of law enforcement by those who are not trained as lawyers and who cannot depend on advice in specific situations from trained lawyers with opportunity for reflection. Given the nature of the subject itself, there is no reason to believe that now-difficult rules are likely to be simplified and that disagreement will cease. But instead of taking such conclusions as counsels of despair or as statements of historical necessity, we urge the Court to take them as reasons for concluding that *Mapp v. Ohio*, 367 U.S. 643 (1961), and the cases that have followed it have needlessly penalized the process of administering the national Constitution and the good faith enforcement of the criminal law by the states. We thus urge the Court to take these conclusions as reasons for overruling *Mapp v. Ohio*, *supra*, now.

This case presents the issues inherent in the reexamination of *Mapp v. Ohio*, 367 U.S. 643 (1961), as squarely as any case can, and the Court itself has not spared any emphasis of the importance of the result in this particular case. Though the immediately available state remedies of damage actions are wholly satisfactory to no one, they are more satisfactory than continuing uncertainty to state convictions and reversals of them. And while the Court may wait upon the national Congress or upon the states to develop a better alternative, it may as well be that the action of the Court in overruling *Mapp v. Ohio*, *supra*, will prove to be the necessary and sufficient inducement to complementary action by the coordinate governments and branches of government in the republic.

CONCLUSION

For these reasons we urge the Court to grant this petition for rehearing.

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I certify that the foregoing petition is presented in good faith and not for delay.

DAVID H. SOUTER

July 12, 1971

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COOLIDGE v. NEW HAMPSHIRE

CERTIORARI TO THE SUPREME COURT OF NEW HAMPSHIRE

No. 323. Argued January 12, 1971—Decided June 21, 1971

Police went to petitioner's home on January 28, 1964, to question him about a murder. In the course of their inquiry he showed them three guns; and he agreed to take a lie-detector test on February 2. The test was inconclusive on the murder but during its course petitioner admitted a theft. In petitioner's absence, two other policemen came to the house and questioned petitioner's wife to check petitioner's story and corroborate his admission of the theft. Unaware of the visit of the other officers who had been shown the guns and knowing little about the murder weapon, the police asked about any guns there might be in the house and were shown four by petitioner's wife which she offered to let them take. After one policeman first declined the offer, they took the guns, along with various articles of petitioner's clothing his wife made available to them. On February 19, petitioner was arrested in his house for the murder and on that date a warrant to search petitioner's automobile was applied for by the police chief and issued by the Attorney General (who had assumed charge of the investigation and was later the chief prosecutor at the trial), acting as a justice of the peace. The car, which at the time of the arrest was parked in petitioner's driveway, was subsequently towed to the police station, where on February 21 and on two occasions the next year it was searched. Vacuum sweepings from the car as well as from the clothing were used as evidence at the trial, along with one of the guns made available by petitioner's wife. Following the overruling of pretrial motions to suppress that evidence, petitioner was convicted, and the State Supreme Court affirmed. *Held*:

1. The warrant for the search and seizure of petitioner's automobile did not satisfy the requirements of the Fourth Amendment as made applicable to the States by the Fourteenth because it

Syllabus

was not issued by a "neutral and detached magistrate." *Johnson v. United States*, 333 U. S. 10, 14. Pp. 4-9.

2. The basic constitutional rule is that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-defined exceptions," and on the facts of this case, a warrantless search and seizure of the car cannot be justified under those exceptions. Pp. 9-38.

(a) The seizure of the car in the driveway cannot be justified as incidental to the arrest which took place inside the house. Even assuming, *arguendo*, that the police could properly have made a warrantless search of the car in the driveway when they arrested petitioner, they could not have done so at their leisure after its removal. Pp. 11-13.

(b) Under the circumstances present here—where the police for some time had known of the probable role of the car in the crime, petitioner had had ample opportunity to destroy incriminating evidence, the house was guarded at the time of arrest and petitioner had no access to the car—there were no exigent circumstances justifying the warrantless search even had it been made before the car was taken to the police station, and the special exceptions for automobile searches in *Carroll v. United States*, 267 U. S. 132, and *Chambers v. Maroney*, 399 U. S. 42, are clearly inapplicable. Cf. *Dyke v. Taylor Implement Mfg. Co.*, 391 U. S. 216. Pp. 13-19.

(c) Under certain circumstances the police may without a warrant seize evidence in "plain view," though not for that reason alone and only when the discovery of the evidence is inadvertent. That exception is inapplicable to the facts of the instant case, where the police had ample opportunity to obtain a valid warrant, knew in advance the car's description and location, intended to seize it when they entered on petitioner's property, and no contraband or dangerous objects were involved. Pp. 20-29.

3. No search and seizure were implicated in the February 2 visit when the police obtained the guns and clothing from petitioner's wife, and hence they needed no warrant. The police, who exerted no effort to coerce or dominate her, were not obligated to refuse her offer to take the guns, and in making these and the other items available to the police, she was not acting as the instrument or agent of the police. Pp. 41-44.

109 N. H. 403, 260 A. 2d 547, reversed and remanded.

Syllabus

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J. (as to Part III), and HARLAN (as to Parts I, II D, and III), DOUGLAS, BRENNAN, and MARSHALL, JJ., joined. HARLAN, J., filed a concurring opinion. BURGER, C. J., filed a concurring and dissenting opinion. BLACK, J., filed a concurring and dissenting opinion, in a portion of Part I and in Parts II and III of which BURGER, C. J., and BLACKMUN, J., joined. WHITE, J., filed a concurring and dissenting opinion, in which BURGER, C. J., joined.

CHAPTER I

THE first of the great principles of the American Revolution was the right of the people to alter or to abolish their government, and to institute a new one, when it became necessary for them to do so. This principle was the foundation of the American Republic, and it was the first principle of the American Constitution.

The second principle of the American Revolution was the right of the people to be represented in their government. This principle was the foundation of the American Republic, and it was the second principle of the American Constitution.

The third principle of the American Revolution was the right of the people to be protected in their property. This principle was the foundation of the American Republic, and it was the third principle of the American Constitution.

The fourth principle of the American Revolution was the right of the people to be protected in their liberty. This principle was the foundation of the American Republic, and it was the fourth principle of the American Constitution.

The fifth principle of the American Revolution was the right of the people to be protected in their lives. This principle was the foundation of the American Republic, and it was the fifth principle of the American Constitution.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 323.—OCTOBER TERM, 1970

Edward H. Coolidge, Jr., Petitioner, v. New Hampshire.	}	On Writ of Certiorari to the Supreme Court of New Hampshire.
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[June 21, 1971]

MR. JUSTICE STEWART delivered the opinion of the Court.*

We are called upon in this case to decide issues under the Fourth and Fourteenth Amendments arising in the context of a state criminal trial for the commission of a particularly brutal murder. As in every case, our single duty is to determine the issues presented in accord with the Constitution and the law.

Pamela Mason, a 14-year-old girl, left her home in Manchester, New Hampshire on the evening of January 13, 1964, during a heavy snowstorm, apparently in response to a man's telephone call for a babysitter. Eight days later, after a thaw, her body was found by the side of a major north-south highway several miles away. She had been murdered. The event created great alarm in the area, and the police immediately began a massive investigation.

On January 28, having learned from a neighbor that the petitioner, Edward Coolidge, had been away from home on the evening of the girl's disappearance, the police went to his house to question him. They asked

*Parts II A, II B, and II C of this opinion are joined only by Mr. Justice Douglas, Mr. Justice Brennan, and Mr. Justice Marshall.

him, among other things, if he owned any guns, and he produced three, two shotguns and a rifle. They also asked whether he would take a lie detector test concerning his account of his activities on the night of the disappearance. He agreed to do so on the following Sunday, his day off. The police later described his attitude on the occasion of this visit as fully "cooperative." His wife was in the house throughout the interview.

On the following Sunday, a policeman called Coolidge early in the morning and asked him to come down to the police station for the trip to Concord, New Hampshire, where the lie detector test was to be administered. That evening, two plain clothes policemen arrived at the Coolidge house, where Mrs. Coolidge was waiting with her mother-in-law for her husband's return. These two policemen were not the two who had visited the house earlier in the week, and they apparently did not know that Coolidge had displayed three guns for inspection during the earlier visit. The plainclothesmen told Mrs. Coolidge that her husband was in "serious trouble" and probably would not be home that night. They asked Coolidge's mother to leave, and proceeded to question Mrs. Coolidge. During the course of the interview they obtained from her four guns belonging to Coolidge, and some clothes that Mrs. Coolidge thought her husband might have been wearing on the evening of Pamela Mason's disappearance.

Coolidge was held in jail on an unrelated charge that night, but he was released the next day.¹ During the ensuing two and a half weeks, the State accumulated a quantity of evidence to support the theory that it was he who had killed Pamela Mason. On February 19, the results of the investigation were presented at a meeting between the police officers working on the case and the

¹ During the lie detector test, Coolidge had confessed to a theft of money from his employer. See III A of text, *infra*.

State Attorney General, who had personally taken charge of all police activities relating to the murder, and was later to serve as chief prosecutor at the trial. At this meeting, it was decided that there was enough evidence to justify the arrest of Coolidge on the murder charge and a search of his house and two cars. At the conclusion of the meeting, the Manchester police chief made formal application, under oath, for the arrest and search warrants. The complaint supporting the warrant for a search of Coolidge's Pontiac automobile, the only warrant which concerns us here, stated that the affiant "has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects and things used in the Commission of said offense, now kept, and concealed in or upon a certain vehicle, to wit: 1951 Pontiac two-door sedan. . . ." The warrants were then signed and issued by the Attorney General himself, acting as a justice of the peace. Under New Hampshire law in force at that time, all justices of the peace were authorized to issue search warrants. N. H. Rev. Stat. Ann. § 595:1 (repealed 1969).

The police arrested Coolidge in his house on the day the warrant issued. Mrs. Coolidge asked whether she might remain in the house with her small child, but was told that she must stay elsewhere, apparently in part because the police believed that she would be harassed by reporters if she were accessible to them. When she asked whether she might take her car, she was told that both cars had been "impounded," and that the police would provide transportation for her. Some time later, the police called a towing company, and about two and a half hours after Coolidge had been taken into custody the cars were towed to the police station. It appears that at the time of the arrest the cars were parked in the Coolidge driveway, and that although dark had fallen they were plainly visible both from the street and from

inside the house where Coolidge was actually arrested. The 1951 Pontiac was seached and vacuumed on February 21, two days after it was seized, again a year later, in January 1965, and a third time in April, 1965.

At Coolidge's subsequent jury trial on the charge of murder, vacuum sweepings, including particles of gun powder, taken from the Pontiac were introduced in evidence against him, as part of an attempt by the State to show by microscopic analysis that it was highly probable that Pamela Mason had been in Coolidge's car.² Also introduced in evidence was one of the guns taken by the police on their Sunday evening visit to the Coolidge house—a .22 calibre Mossberg rifle, which the prosecution claimed was the murder weapon. Conflicting ballistics testimony was offered on the question whether the bullets found in Pamela Mason's body had been fired from this rifle. Finally, the prosecution introduced vacuum sweepings of the clothes taken from the Coolidge house that same Sunday evening, and attempted to show through microscopic analysis that there was a high probability that the clothes had been in contact with Pamela Mason's body. Pretrial motions to suppress all this evidence were referred by the trial judge to the New Hampshire Supreme Court, which ruled the evidence admissible. 106 N. H. 186, 208 A. 2d 322. The jury found Coolidge guilty and he was sentenced to life imprisonment. The New Hampshire Supreme Court affirmed the judgment of conviction, 109 N. H. 403, 260 A. 2d 547, and we granted certiorari to consider the constitutional questions raised by the admission of this evidence against Coolidge at his trial. 399 U. S. 926.

I

The petitioner's first claim is that the warrant authorizing the seizure and subsequent search of his 1951 Pontiac

² For a very strong argument that this evidence should have been excluded because altogether lacking in probative value, see Tribe, *Trial by Mathematics*, 84 Harv. L. Rev. 1329, 1342 n. 40.

automobile was invalid because not issued by a "neutral and detached magistrate." Since we agree with the petitioner that the warrant was invalid for this reason, we need not consider his further argument that the allegations under oath supporting the issuance of the warrant were so conclusory as to violate relevant constitutional standards. Cf. *Giordenello v. United States*, 357 U. S. 480; *Aguilar v. Texas*, 378 U. S. 108.

The classic statement of the policy underlying the warrant requirement of the Fourth Amendment is that of Mr. Justice Jackson writing for the Court in *Johnson v. United States*, 333 U. S. 10, 13-14:

"The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers. . . . When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent."

Cf. *United States v. Lefkowitz*, 285 U. S. 452, 464; *Giordenello v. United States*, *supra*, at 486. *Wong Sun v. United States*, 371 U. S. 471, 481-482; *Katz v. United States*, 389 U. S. 347, 356-357.

In this case, the determination of probable cause was made by the chief "government enforcement agent" of the State—the Attorney General—who was actively in

charge of the investigation and later was to be chief prosecutor at the trial. To be sure, the determination was formalized here by a writing bearing the title "Search Warrant," whereas in *Johnson* there was no piece of paper involved, but the State has not attempted to uphold the warrant on any such artificial basis. Rather, the State argues that the Attorney General, who was unquestionably authorized as a justice of the peace to issue warrants under then existing state law, did in fact act as a "neutral and detached magistrate." Further, the State claims that *any* magistrate, confronted with the showing of probable cause made by the Manchester chief of police, would have issued the warrant in question. To the first proposition it is enough to answer that there could hardly be a more appropriate setting than this for a *per se* rule of disqualification rather than a case-by-case evaluation of all the circumstances. Without disrespect to the state law enforcement agent here involved, the whole point of the basic rule so well expressed by Mr. Justice Jackson is that prosecutors and policemen simply cannot be asked to maintain the requisite neutrality with regard to their own investigations—the "competitive enterprises" which must rightly engage their single minded attention.³ Cf. *Mancusi v. DeForte*, 392 U. S. 364, 371. As for the proposition that the existence of probable cause renders noncompliance with the warrant procedure an irrelevance, it is enough to cite *Agnello v. United States*, 269 U. S. 20, 33, decided in 1925:

"Belief, however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant.

³ After hearing the Attorney General's testimony on the issuance of the warrants, the trial judge said:

"I found that an impartial Magistrate would have done the same as you did. I don't think, in all sincerity, that I would expect that you could wear two pairs of shoes."

And such searches are held unlawful notwithstanding facts unquestionably showing probable cause."

See also *Jones v. United States*, 357 U. S. 493, 497-498; *Silverthorne Lumber Co. v. United States*, 251 U. S. 385, 392. ("[T]he rights . . . against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way.")

But the New Hampshire Supreme Court, in upholding the conviction, relied upon the theory that even if the warrant procedure here in issue would clearly violate the standards imposed on the Federal Government by the Fourth Amendment, it is not forbidden the States under the Fourteenth. This position was premised on a passage from the opinion of this Court in *Ker v. California*, 374 U. S. 23, 31:

"Preliminary to our examination of the search and seizure involved here, it might be helpful for us to indicate what was not decided in *Mapp* [v. *Ohio*, 367 U. S. 643]. First, it must be recognized that the 'principles governing the admissibility of evidence in federal criminal trials have not been restricted . . . to those derived solely from the Constitution. In the exercise of its supervisory authority over the administration of criminal justice in the federal courts . . . this Court has . . . formulated rules of evidence to be applied in federal criminal prosecutions.' *McNabb v. United States*, 318 U. S. 332, 341 . . . *Mapp*, however, established no assumption by this Court of supervisory authority over state courts, . . . and, consequently, it implied no total obliteration of state laws relating to arrests and searches in favor of federal law. *Mapp* sounded no death knell for our federalism; rather, it echoed the sentiment of *Elkins v. United States*, *supra*, at 221, that 'a healthy federalism depends upon the avoidance of needless conflict between state and federal

courts' by itself urging that '[f]ederal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect *the same fundamental criteria in their approaches.*' 367 U. S., at 658." (Emphasis in *Ker.*)

It is urged that the New Hampshire statutes which at the time of the searches here involved permitted a law enforcement officer himself to issue a warrant was one of those "workable rules governing arrests, searches and seizures to meet 'the practical demands of effective criminal investigation and law enforcement' in the States," *id.*, at 34, authorized by *Ker.*

That such a procedure was indeed workable from the point of view of the police is evident from testimony at the trial in this case:

"The Court: You mean that another police officer issues these [search warrants]?"

"The Witness: Yes. Captain Couture and Captain Shea and Captain Loveren are J. P.'s.

"The Court: Well, let me ask you, Chief, your answer is to the effect that you never go out of the department for the Justice of the Peace?"

"The Witness: It hasn't been our—policy to go out of the department.

"Q. Right. Your policy and experience, is to have a fellow police officer take the warrant in the capacity of Justice of the Peace?"

"A. That has been our practice."

But it is too plain for extensive discussion that this now abandoned New Hampshire method of issuing "search warrants" violated a fundamental premise of both the Fourth and Fourteenth Amendments—a premise fully developed and articulated long before this Court's decisions in *Ker v. California*, *supra*, and *Mapp v. Ohio*,

367 U. S. 643. As Mr. Justice Frankfurter put it in *Wolf v. Colorado*, 338 U. S. 25, 27-28:

"The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned"

We find no escape from the conclusion that the seizure and search of the Pontiac automobile cannot constitutionally rest upon the warrant issued by the state official who was the chief investigator and prosecutor in this case. Since he was not the neutral and detached magistrate required by the Constitution, the search stands on no firmer ground than if there had been no warrant at all. If the seizure and search are to be justified, they must, therefore, be justified on some other theory.

II

The State proposes three distinct theories to bring the facts of this case within one or another of the exceptions to the warrant requirement. In considering them, we must not lose sight of the Fourth Amendment's fundamental guarantee. Mr. Justice Bradley's admonition in his opinion for the Court almost a century ago in *Boyd v. United States*, 116 U. S. 616, 635, is worth repeating here:

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight

deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.”⁴

Thus the most basic constitutional rule in this area is that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.”⁵ The exceptions are “jealously and carefully drawn,”⁶ and there must be “a showing by those

⁴ See also *Gouled v. United States*, 255 U. S. 298, 303-304 (1921):

“It would not be possible to add to the emphasis with which the framers of our Constitution and this court . . . have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two Amendments [the Fourth and Fifth]. The effect of the decisions cited is: that such rights are declared to be indispensable to the ‘full enjoyment of personal security, personal liberty and private property’; that they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen,—the right, to trial by jury, to the writ of *habeas corpus* and to due process of law. It has been repeatedly decided that these Amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or ‘gradual depreciation’ of the rights secured by them, by imperceptible practice of courts or by well-intentioned but mistakenly over-zealous executive officers.”

See also *Go-Bart Importing Co. v. United States*, 282 U. S. 344, 357.

⁵ *Katz v. United States*, 389 U. S. 347, 357.

⁶ *Jones v. United States*, 357 U. S. 493, 499.

who seek exemption . . . that the exigencies of the situation made that course imperative."⁷ "[T]he burden is on those seeking the exemption to show the need for it."⁸ In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values that it represents may appear unrealistic or "extravagant" to some. But the values were those of the authors of our fundamental constitutional concepts. In times not altogether unlike our own they won—by legal and constitutional means in England,⁹ and by revolution on this continent—a right of personal security against arbitrary intrusions by official power. If times have changed, reducing every man's scope to do as he pleases in an urban and industrial world, the changes have made the values served by the Fourth Amendment more, not less, important.¹⁰

A

The State's first theory is that the seizure and subsequent search of Coolidge's Pontiac on February 19 were "incident" to a valid arrest. We assume that the arrest of Coolidge inside his house was valid, so that the first condition of a warrantless "search incident" is met. *Whiteley v. Wyoming Penitentiary Warden*, — U. S. —, —. And since the events in issue took place in 1964, we assess the State's argument in terms of the law as it existed before *Chimel v. California*, 395 U. S. 752, which substantially restricted the "search incident" exception to the warrant requirement, but did so only prospectively. *Williams v. United States*, — U. S. —. But even under pre-*Chimel* law, the State's position is untenable.

⁷ *McDonald v. United States*, 335 U. S. 451, 456.

⁸ *United States v. Jeffers*, 342 U. S. 48, 51.

⁹ See *Entick v. Carrington*, 19 How. St. Tr. 1029 (1765), and *Wilkes v. Wood*, 19 How. St. Tr. 1153 (1763).

¹⁰ See *Elkins v. United States*, 364 U. S. 206.

The leading case in the area before *Chimel* was *United States v. Rabinowitz*, 339 U. S. 56, which was taken to stand "for the proposition, *inter alia*, that a warrantless search 'incident to a lawful arrest' may generally extend to the area that is considered to be in the 'possession' or under the 'control' of the person arrested." *Chimel*, *supra*, at 760. In this case, Coolidge was arrested inside his house; his car was outside in the driveway. The car was not touched until Coolidge had been removed from the scene. It was then seized and taken to the station, but it was not actually searched until the next day.

First, it is doubtful whether the police could have carried out a contemporaneous search of the car under *Rabinowitz* standards. For this Court has repeatedly held that, even under *Rabinowitz*, "[a] search may be incident to an arrest 'only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. . . .'" *Vale v. Louisiana*, 399 U. S. 30, 33, quoting from *Shipley v. California*, 395 U. S. 818, 819, quoting from *Stoner v. California*, 376 U. S. 483, 486. (Emphasis in original.) Cf. *Agnello v. United States*, 269 U. S. 20, 30-31; *James v. Louisiana*, 382 U. S. 36. These cases make it clear beyond any question that a lawful pre-*Chimel* arrest of a suspect outside his house could never by itself justify a warrantless search inside the house. There is nothing in search-incident doctrine (as opposed to the special rules for automobiles and evidence in "plain view," to be considered below) that suggests a different result where the arrest is made inside the house and the search outside and at some distance away.¹¹

¹¹ The suggestion in Part III A of the dissenting opinion of Mr. JUSTICE BLACK that this represents the formulation of "a per se rule reaching far beyond" *Chimel v. California*, 395 U. S. 752, *post*, at —, is mistaken. The question discussed here is whether under pre-*Chimel* law the police could, contemporaneously with the arrest of

Even assuming, *arguendo*, that the police might have searched the Pontiac in the driveway when they arrested Coolidge in the house, *Preston v. United States*, 376 U. S. 364, makes plain that they could not legally seize the car, remove it, and search it at their leisure without a warrant. In circumstances virtually identical to those here, MR. JUSTICE BLACK's opinion for a unanimous Court held that "[o]nce an accused is under arrest and in custody, then a search [of his car] made at another place, without a warrant, is simply not incident to the arrest." *Id.*, at 367. *Dyke v. Taylor Implement Mfg. Co.*, 391 U. S. 216. Cf. *Chambers v. Maroney*, 399 U. S. 42, 47. Search incident doctrine, in short, has no applicability to this case.¹²

B

The second theory put forward by the State to justify a warrantless seizure and search of the Pontiac car is that under *Carroll v. United States*, 267 U. S. 132, the police may make a warrantless search of an automobile whenever they have probable cause to do so, and, under our decision last Term in *Chambers v. Maroney*, 399 U. S. 42, whenever the police may make a legal contemporaneous search under *Carroll*, they may also seize

Coolidge inside his house, make a search of his car for evidence—i. e., the particles later introduced at his trial. There can be no question that *after Chimel*, such a search could not be justified as "incident" to the arrest, since *Chimel* held that a search so justified can extend only to the "arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." 395 U. S., at 763. The quite distinct question whether the police were entitled to seize the automobile as evidence in plain view is discussed in Part II C below. Cf. n. 24 *infra*.

¹² *Cooper v. California*, 386 U. S. 58, is not in point, since there the State did not rely on the theory of a search incident to arrest, but sought to justify the search on other grounds. *Id.*, at 60. MR. JUSTICE BLACK's opinion for the Court in *Cooper* reaffirmed *Preston v. United States*, 376 U. S. 364.

the car, take it to the police station, and search it there. But even granting that the police had probable cause to search the car, the application of the *Carroll* case to these facts would extend it far beyond its original rationale.

Carroll did indeed hold that "contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant,"¹³ provided that "the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes has contraband liquor therein which is being illegally transported."¹⁴ Such searches had been explicitly authorized by Congress, and, as we have pointed out elsewhere,¹⁵ in the conditions of the time "[a]n automobile . . . was an almost indispensable instrumentality in large-scale violation of the National Prohibition Act, and the car itself therefore was treated somewhat as an offender and became contraband." In two later cases,¹⁶ each involving an occupied automobile stopped on the open highway and searched for contraband liquor, the Court followed and reaffirmed *Carroll*.¹⁷ And last Term in *Chambers, supra*, we did so again.

¹³ 267 U. S., at 153.

¹⁴ *Id.*, at 156.

¹⁵ *United States v. Di Re*, 332 U. S. 581, 586.

¹⁶ *Husty v. United States*, 282 U. S. 694; *Brinegar v. United States*, 338 U. S. 160.

¹⁷ A third case that has sometimes been cited as an application of *Carroll v. United States*, 267 U. S. 132, is *Scher v. United States*, 305 U. S. 251. There, the police were following an automobile which they had probable cause to believe contained a large quantity of contraband liquor. The facts were as follows:

The driver

"turned into a garage a few feet back of his residence and within the curtilage. One of the pursuing officers left their car and followed. As petitioner was getting out of his car this officer approached, announced his official character, and stated he was informed that the car was hauling bootleg liquor. Petitioner re-

The underlying rationale of *Carroll* and of all the cases which have followed it is that there is

"a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." 267 U. S., at 153. (Emphasis supplied.)

As we said in *Chambers, supra*, at 51, "exigent circumstances" justify the warrantless search of "an automobile stopped on the highway," where there is probable cause, because the car is "movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained." "[T]he opportunity to search is fleeting" (Emphasis supplied.)

plied, 'just a little for a party.' Asked whether the liquor was tax paid, he replied that it was Canadian whiskey; also, he said it was in the trunk at the rear of the car. The officer opened the trunk and found" 305 U. S., at 253.

The Court held:

"Considering the doctrine of *Carroll v. United States*, 267 U. S. 132 . . . and the application of this to the facts there disclosed, it seems plain enough that just before he entered the garage the following officers properly could have stopped petitioner's car, made search, and put him under arrest. So much was not seriously controverted at the argument.

"Passage of the car into the open garage closely followed by the observing officer did not destroy this right. No search was made of the garage. Examination of the automobile accompanied an arrest, without objection and upon admission of probable guilt. The officers did nothing either unreasonable or oppressive. *Agnello v. United States*, 269 U. S. 20, 30; *Wisniewski v. United States*, 47 F. 2d 825, 826 [CCA6 1931]." 305 U. S., at 254-255.

Both *Agnello*, at the page cited, and *Wisniewski* dealt with the admissibility of evidence seized during a search incident to a lawful arrest.

In this case, the police had known for some time of the probable role of the Pontiac car in the crime. Coolidge was aware that he was a suspect in the Mason murder, but he had been extremely cooperative throughout the investigation, and there was no indication that he meant to flee. He had already had ample opportunity to destroy any evidence he thought incriminating. There is no suggestion that, on the night in question, the car was being used for any illegal purpose, and it was regularly parked in the driveway of his house. The opportunity for search was thus hardly "fleeting." The objects which the police are assumed to have had probable cause to search for in the car were neither stolen nor contraband nor dangerous.

When the police arrived at the Coolidge house to arrest him, two officers were sent to guard the back door while the main party approached from the front. Coolidge was arrested inside the house, without resistance of any kind on his part, after he had voluntarily admitted the officers at both front and back doors. There was no way in which he could conceivably have gained access to the automobile after the police arrived on his property. When Coolidge had been taken away, the police informed Mrs. Coolidge, the only other adult occupant of the house, that she and her baby must spend the night elsewhere and that she could not use either of the Coolidge cars. Two police officers then drove her in a police car to the house of a relative in another town, and they stayed with her there until around midnight, long after the police had had the Pontiac towed to the station house. The Coolidge premises were guarded throughout the night by two policemen.¹⁸

¹⁸ It is frequently said that occupied automobiles stopped on the open highway may be searched without a warrant because they are "mobile," or "movable." No other basis appears for Mr. Justice WHITE's suggestion in his dissenting opinion that we should "treat

The word "automobile" is not a talisman in whose presence the Fourth Amendment fades away and disappears. And surely there is nothing in this case to invoke the meaning and purpose of the rule of *Carroll v. United States*—no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized automobile. In short, by no possible stretch of the legal imagination can this be made into a case where "it is not practicable to secure a warrant,"

searches of automobiles as we do the arrest of a person." *Post*, at —. In this case, it is of course true that even though Coolidge was in jail, his wife was miles away in the company of two plainclothesmen, and the Coolidge property was under the guard of two other officers, the automobile was in a literal sense "mobile." A person who had the keys and could slip by the guard could drive it away. We attach no constitutional significance to this sort of mobility.

First, a good number of the containers which the police might discover on a person's property and want to search are equally movable, *e. g.*, trunks, suitcases, boxes, briefcases, and bags. How are such objects to be distinguished from an unoccupied automobile—not then being used for any illegal purpose—sitting on the owner's property? It is true that the automobile has wheels and its own locomotive power. But given the virtually universal availability of automobiles in our society there is little difference between driving the container itself away and driving it away in a vehicle brought to the scene for that purpose. Of course if there is a criminal suspect close enough to the automobile so that he might get a weapon from it or destroy evidence within it, the police may make a search of appropriately limited scope. *Chimel v. California*, 395 U. S. 752. See II A of the text, *supra*. But if *Carroll v. United States*, 267 U. S. 132, permits a warrantless search of an unoccupied vehicle, on private property and beyond the scope of a valid search incident to an arrest, then it would permit as well a warrantless search of a suitcase or a box. We have found no case that suggests such an extension of *Carroll*. See nn. 16, 17, *supra*.

Carroll, supra, at 153, and the "automobile exception," despite its label, is simply irrelevant.¹⁹

Since *Carroll* would not have justified a warrantless search of the Pontiac at the time Coolidge was arrested, the later search at the station house was plainly illegal, at least so far as the automobile exception is concerned. *Chambers, supra*, is of no help to the State, since that case held only that, where the police may stop and search an automobile under *Carroll*, they may also seize it and search it later at the police station.²⁰ Rather, this

¹⁹ Cf. *United States v. Payne*, 429 F. 2d 169 (CA9 1970). In that case, two couples were camping in an individually allotted campsite in Yosemite National Park. During the evening, an off-duty policeman camping with his family in an adjoining site observed the two couples smoking a substance he believed to be marihuana and also observed them making what he thought "furtive" movements to remove objects he thought to be drugs from the glove compartment of a car parked nearby. He summoned a park ranger, and the two entered the campsite. They found that one of the couples was preparing to bed down for the night, while the couple to whom the car belonged were visiting in another campsite. The officers searched the unoccupied parked automobile, found 12 Seconal tablets, and arrested the couple who had stayed behind. The Government attempted to uphold the search under *Carroll, supra*, and *Brinegar, supra*. The Court of Appeals answered:

"While it is true that the Supreme Court has enunciated slightly different rules concerning search of an automobile without a warrant, the rationale is apparently based upon the fact that a 'vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.' *Chimel v. California*, 395 U. S. 752, 764 In the instant case the search of the Volkswagen cannot be justified upon this reasoning. There is no indication in the record that the appellant or any of his party were preparing to leave, and quite to the contrary it is clear that appellant was bedding down for the evening and that there was ample time to secure the necessary warrant for the search of the car had [the Park Ranger] believed there was probable cause to seek one." 429 F. 2d, at 171-172.

²⁰ Part III B of the dissenting opinion of Mr. JUSTICE BLACK argues with vehemence that this case must somehow be controlled by *Chambers v. Maroney*, 399 U. S. 42, yet the precise applicability of

case is controlled by *Dyke v. Taylor Implement Mfg. Co.*, *supra*. There the police lacked probable cause to seize or search the defendant's automobile at the time of his arrest, and this was enough by itself to condemn the subsequent search at the station house. Here there was probable cause, but no exigent circumstances justified the police in proceeding without a warrant. As in *Dyke*, the later search at the station house was therefore illegal.²¹

Chambers is never made clear. On its face, *Chambers* purports to deal only with situations in which the police may legitimately make a warrantless search under *Carroll v. United States*, 267 U. S. 132. Since the *Carroll* rule does not apply in the circumstances of this case, the police could not have searched the car without a warrant when they arrested Coolidge. Thus the argument of the dissent must be that *Chambers* somehow operated *sub silentio* to extend the basic doctrine of *Carroll*. It is true that the actual search of the automobile in *Chambers* was made at the police station many hours after the car had been stopped on the highway, when the car was no longer movable, any "exigent circumstances" had passed, and, for all the record shows, there was a magistrate easily available. Nonetheless, the analogy to this case is misleading. The rationale of *Chambers* is that given a justified initial intrusion, there is little difference between a search on the open highway and a later search at the station. Here, we deal with the prior question of whether the initial intrusion is justified. For this purpose, it seems abundantly clear that there is a significant constitutional difference between stopping, seizing, and searching a car on the open highway, and entering private property to seize and search an unoccupied, parked vehicle not then being used for any illegal purpose. That the police may have been legally on the property in order to arrest Coolidge is of course immaterial, since, as shown in II A of the text, *supra*, that purpose could not authorize search of the car even under *United States v. Rabinowitz*, 339 U. S. 56.

²¹ *Cooper v. California*, 386 U. S. 58, is no more in point here than in the context of a search incident to a lawful arrest. See n. 12, *supra*. In *Cooper*, the seizure of the petitioner's car was mandated by California statute, and its legality was not questioned. The case stands for the proposition that, given an unquestionably legal seizure, there are special circumstances which may validate a subsequent warrantless search. Cf. *Chambers*, *supra*. The case

C

The State's third theory in support of the warrantless seizure and search of the Pontiac car is that the car itself was an "instrumentality of the crime," and as such might be seized by the police on Coolidge's property because it was in plain view. Supposing the seizure to be thus lawful, the case of *Cooper v. California*, 386 U. S. 58, is said to support a subsequent warrantless search at the station house, with or without probable cause. Of course, the distinction between an "instrumentality of crime" and "mere evidence" was done away with by *Warden v. Hayden*, 387 U. S. 294, and we may assume that the police had probable cause to seize the automobile.²² But, for the reasons that follow, we hold that the "plain view" exception to the warrant requirement is inapplicable to this case. Since the seizure was therefore illegal, it is unnecessary to consider the applicability of *Cooper*, *supra*, to the subsequent search.²³

It is well established that under certain circumstances the police may seize evidence in plain view without a warrant. But it is important to keep in mind that, in the vast majority of cases, *any* evidence seized by the police will be in plain view, at least at the moment of seizure. The problem with the "plain view" doctrine has been to identify the circumstances in which plain view has legal significance rather than being simply the normal concomitant of any search, legal or illegal.

An example of the applicability of the "plain view"

certainly should not be read as holding that the police can do without a warrant at the police station what they are forbidden to do without a warrant at the place of seizure.

²² Coolidge had admitted that on the night of Pamela Mason's disappearance he had stopped his Pontiac on the side of the highway opposite the place where the body was found. He claimed the car was stuck in the snow. Two witnesses, who had stopped and asked him if he needed help, testified that his car was not stuck.

²³ See nn. 12 and 21, *supra*.

doctrine is the situation in which the police have a warrant to search a given area for specified objects, and in the course of the search come across some other article of incriminating character. Cf. *Go-Bart Importing Co. v. United States*, 282 U. S. 344, 358; *United States v. Lefkowitz*, 285 U. S. 452, 465; *Steele v. United States*, 267 U. S. 498; *Stanley v. Georgia*, 394 U. S. 557, 571 (STEWART, J., concurring). Where the initial intrusion which brings the police within plain view of such an article is supported not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is also legitimate. Thus the police may inadvertently come across evidence while in "hot pursuit" of a fleeing suspect. *Warden v. Hayden*, *supra*. Cf. *Hester v. United States*, 265 U. S. 57. And an object which comes into view during a search incident to arrest that is appropriately limited in scope under existing law may be seized without a warrant.²⁴ *Chimel v. California*, 395 U. S. 752, 762-763. Finally, the "plain view" doctrine

²⁴ The "plain view" exception to the warrant requirement is not in conflict with the law of search incident to a valid arrest expressed in *Chimel v. California*, 395 U. S. 752. The Court there held that "[t]here is ample justification . . . for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.*, at 763. The "plain view" doctrine would normally justify as well the seizure of other evidence that came to light during such an appropriately limited search. The Court in *Chimel* went on to hold that "[t]here is no comparable justification, however, for routinely searching any room other than that in which an arrest occurs—or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant." *Ibid.* Where, however, the arresting officer inadvertently comes within plain view of a piece of evidence, not concealed, although outside of the area under the immediate control of the arrestee, the officer may seize it, so long as the plain view was obtained in the course of an appropriately limited search of the arrestee.

has been applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. *Harris v. United States*, 390 U. S. 234; *Frazier v. Cupp*, 394 U. S. 731; *Ker v. California*, 374 U. S. 23, 43. Cf. *Lewis v. United States*, 385 U. S. 206.

What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification—whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused—and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. Cf. *Stanley v. Georgia*, *supra*, 571-572 (STEWART, J., concurring).

The rationale for the "plain view" exception is evident if we keep in mind the two distinct constitutional protections served by the warrant requirement. First, the magistrate's scrutiny is intended to eliminate altogether searches not based on probable cause. The premise here is that *any* intrusion in the way of search or seizure is an evil, so that no intrusion at all is justified without a careful prior determination of necessity. See, *e. g.*, *McDonald v. United States*, 335 U. S. 451; *Warden v. Hayden*, 387 U. S. 294; *Katz v. United States*, 389 U. S. 347; *Chimel v. California*, 395 U. S. 752, 761-762. The second, distinct objective is that those searches deemed necessary should be as limited as possible. Here, the specific evil is the "general warrant" abhorred by the

colonists, and the problem is not that of intrusion *per se*, but of a general, exploratory rummaging in a person's belongings. See, *e. g.*, *Boyd v. United States*, 116 U. S. 616, 624-630; *Marron v. United States*, 275 U. S. 192, 195-196; *Stanford v. Texas*, 379 U. S. 476. The warrant accomplishes this second objective by requiring a "particular description" of the things to be seized.

The "plain view" doctrine is not in conflict with the first objective because plain view does not occur until a search is in progress. In each case, this initial intrusion is justified by a warrant or by an exception such as "hot pursuit" or search incident to a lawful arrest, or by an extraneous valid reason for the officer's presence. And given the initial intrusion, the seizure of an object in plain view is consistent with the second objective, since it does not convert the search into a general or exploratory one. As against the minor peril to Fourth Amendment protections, there is a major gain in effective law enforcement. Where, once an otherwise lawful search is in progress, the police inadvertently come upon a piece of evidence, it would often be a needless inconvenience, and sometimes dangerous—to the evidence or to the police themselves—to require them to ignore it until they have obtained a warrant particularly describing it.

The limits on the doctrine are implicit in the statement of its rationale. The first of these is that plain view *alone* is never enough to justify the warrantless seizure of evidence. This is simply a corollary of the familiar principle discussed above, that no amount of probable cause can justify a warrantless search or seizure absent "exigent circumstances." Incontrovertible testimony of the senses that an incriminating object is on premises belonging to a criminal suspect may establish the fullest possible measure of probable cause. But even where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter

and make a warrantless seizure. *Taylor v. United States*, 286 U. S. 1; *Johnson v. United States*, 333 U. S. 10; *McDonald v. United States*, 335 U. S. 451; *Jones v. United States*, 357 U. S. 493, 497-498; *Chapman v. United States*, 365 U. S. 610; *Trupiano v. United States*, 334 U. S. 699.²⁵

²⁵ *Trupiano v. United States*, 334 U. S. 699, applied the principle in circumstances somewhat similar to those here. Federal law enforcement officers had infiltrated an agent into a group engaged in manufacturing illegal liquor. The agent had given them the fullest possible description of the layout and equipment of the illegal distillery. Although they had ample opportunity to do so, the investigators failed to procure search or arrest warrants. Instead, they staged a warrantless nighttime raid on the premises. After entering the property, one of the officers looked through the doorway of a shed, and saw one of the criminals standing beside an illegal distillery. The officer entered, made a legal arrest, and seized the still. This Court held it inadmissible at trial, rejecting the Government's argument based on "the long line of cases recognizing that an arresting officer may look around at the time of the arrest and seize those fruits and evidences of crime or those contraband articles which are in plain sight and in his immediate and discernible presence." 334 U. S., at 704. The Court reasoned that there was no excuse whatever for the failure of the agents to obtain a warrant before entering the property, and that the mere fact that a suspect was arrested in the proximity of the still provided no "exigent circumstance" to validate a warrantless seizure. The scope of the intrusion permitted to make the valid arrest did not include a warrantless search for and seizure of a still whose exact location and illegal use were known well in advance. The fact that at the time of the arrest the still was in plain view and nearby was therefore irrelevant. The agents were in exactly the same position as the policemen in *Taylor v. United States*, 286 U. S. 1, who had unmistakable evidence of sight and smell that contraband liquor was stored in a garage, but nonetheless violated the Fourth Amendment when they entered and seized it without a warrant.

Trupiano, to be sure, did not long remain undisturbed. The extremely restrictive view taken there of the allowable extent of a search and seizure incident to lawful arrest was rejected in *United States v. Rabinowitz*, 339 U. S. 56. See *Chimel v. California*, 395 U. S. 752. The case demonstrates, however, the operation of the general principle that "plain view" alone can never justify a warrantless seizure. Cf. n. 24 *supra*.

The second limitation is that the discovery of evidence in plain view must be inadvertent.²⁶ The rationale of the exception to the warrant requirement, as just stated,

²⁶ None of the cases cited in Part III C of the dissenting opinion of Mr. JUSTICE BLACK casts any doubt upon this conclusion. In *Steele v. United States*, 267 U. S. 498, agents observed cases marked "Whiskey" being taken into a building from a truck. On this basis, they obtained a warrant to search the premises for contraband liquor. In the course of the search, they came upon a great deal of whisky and gin—not that they had seen unloaded—and various bottling equipment, and seized all they found.

In *Warden v. Hayden*, 387 U. S. 294, the police entered and searched a house in hot pursuit of a fleeing armed robber. The Court pointed out that "[s]peed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to effect an escape." 387 U. S., at 299. The Court then established with painstaking care that the various articles of clothing seized were discovered during a search directed at the robber and his weapons. *Id.*, at 299-300.

In *United States v. Lee*, 274 U. S. 559, a Coast Guard patrol approached a boat on the high seas at night. A search light was turned on the boat and revealed cases of contraband. The liquor subsequently seized was never introduced in evidence, but the seizing officers were allowed to testify to what they had seen. As the Court put it: "A later trespass by the officers, if any, did not render inadmissible in evidence knowledge legally obtained." 274 U. S., at 563.

In *Marron v. United States*, 275 U. S. 192, officers raided a speakeasy with a warrant to search for and seize contraband liquor. They arrested the bartender and seized a number of bills and other papers in plain view on the bar. While searching a closet for liquor they came across a ledger kept in the operation of the illegal business, which they also seized. There is no showing whatever that these seizures outside the warrant were planned in advance. The *Marron* Court upheld them as "incident" to the arrest. The "plain view" aspect of the case was later emphasized in order to avoid the implication that arresting officers are entitled to make an exploratory search of the premises where the arrest occurs. See *Go-Bart Importing Co. v. United States*, 282 U. S. 344, 358; *United States v. Lefkowitz*, 285 U. S. 452, 465; *United States v. Rabinowitz*, 339 U. S. 56, 78 (Frankfurter, J., dissenting). Thus *Marron*, like *Steele*, *supra*,

is that a plain view seizure will not turn an initially valid (and therefore limited) search into a "general" one, while the inconvenience of procuring a warrant to cover an inadvertent discovery is great. But where the discovery is anticipated, where the police know in advance the location of the evidence and intend to seize it, the situation is altogether different. The requirement of a warrant to seize imposes no inconvenience whatever, or at least none which is constitutionally cognizable in a legal system that regards warrantless searches as "per se unreasonable" in the absence of "exigent circumstances."

If the initial intrusion is bottomed upon a warrant which fails to mention a particular object, though the police know its location and intend to seize it, then there is a violation of the express constitutional requirement of "warrants . . . particularly describing . . . [the] things to be seized." The initial intrusion may, of course, be legitimated not by a warrant but by one of the exceptions to the warrant requirement, such as hot pursuit or search incident to lawful arrest. But to extend the scope of such an intrusion to the seizure of objects—not contraband nor stolen nor dangerous in themselves—which the police know in advance they will find in plain view and intend to seize, would fly in the face of the basic rule that no amount of probable cause can justify a warrantless seizure.²⁷

Warden, supra, and *Lee, supra*, can hardly be cited for the proposition that the police may justify a planned warrantless seizure by maneuvering themselves within "plain view" of the object they want.

Finally, *Ker v. California*, 374 U. S. 23, is fully discussed in n. 28 *infra*.

²⁷ MR. JUSTICE BLACK laments that the Court today "abolishes seizure incident to arrest" (but see n. 24, *supra*), while MR. JUSTICE WHITE no less forcefully asserts that the Court's "new rule" will "accomplish nothing." In assessing these claims, it is well to keep in mind that we deal here with a *planned* warrantless seizure. This Court has never permitted the legitimation of a planned warrantless seizure on plain view grounds, see n. 26, *supra*, and to

In the light of what has been said, it is apparent that the "plain view" exception cannot justify the police seizure of the Pontiac car in this case. The police had ample opportunity to obtain a valid warrant; they knew the automobile's exact description and location well in advance; they intended to seize it when they came upon

do so here would be flatly inconsistent with the existing body of Fourth Amendment law. A long line of cases, of which those cited in the text, at n. 25, *supra*, are only a sample, make it clear beyond doubt that the mere fact that the police have legitimately obtained a plain view of a piece of incriminating evidence is not enough to justify a warrantless seizure. Although Mr. JUSTICE BLACK and Mr. JUSTICE WHITE appear to hold contrasting views of the import of today's decision, they are in agreement that this warrant requirement should be ignored whenever the seizing officers are able to arrange to make an arrest within sight of the object they are after. "The exceptions cannot be enthroned into the rule." *United States v. Rabinowitz*, 339 U. S. 56, 80 (Frankfurter, J., dissenting). We recognized the dangers of allowing the extent of Fourth Amendment protections to turn on the location of the arrestee in *Chimel v. California*, 395 U. S. 752, 767, noting that under the law of search incident to arrest as enunciated prior to *Chimel*, "law enforcement officials [had] the opportunity to engage in searches not justified by probable cause, by the simple expedient of arranging to arrest suspects at home rather than elsewhere." Cf. *Trupiano v. United States*, *supra*, n. 25, where the Court held:

"As we have seen, the existence of [the illegal still] and the desirability of seizing it *were known to the agents long before the seizure and formed one of the main purposes of the raid*. Likewise, the arrest of Antoniole [the person found in the shed with the still] . . . was a foreseeable event motivating the raid. But the precise location of the petitioners at the time of their arrest had no relation to the foreseeability or necessity of the seizure. The practicability of obtaining a search warrant did not turn upon whether Antoniole and the others were within the distillery building when arrested or upon whether they were then engaged in operating the illicit equipment. . . . Antoniole might well have been outside the building at that particular time. If that had been the case and he had been arrested in the farmyard, the entire argument advanced by the Government in support of the seizure without warrant would collapse. We do not believe that the applicability of the Fourth Amend-

Coolidge's property. And this is not a case involving contraband or stolen goods or objects dangerous in themselves.²⁸

ment to the facts of this case depends upon such a fortuitous factor as the precise location of Antoniole at the time of the raid." 334 U. S., at 707-708. (Emphasis supplied.)

²⁸ *Ker v. California*, 374 U. S. 23, is not to the contrary. In that case, the police had probable cause to enter Ker's apartment and arrest him, and they made an entry for that purpose. They did not have a search warrant, but the Court held that "time was of the essence," so that a warrant was unnecessary. As the police entered the living room, Ker's wife emerged from the adjacent kitchen. One of the officers moved to the door of the kitchen, looked in, and observed a brick of marihuana in plain view on a table. The officer brought Ker and his wife into the kitchen, questioned them, and, when they failed to explain the marihuana, arrested them, and seized the contraband. The police then searched the whole apartment and found various other incriminating evidence. The Court held that the general exploratory search of the whole apartment "was well within the limits upheld in *Harris v. United States* [331 U. S. 145]" for a search incident to a lawful arrest. The Court also rejected Ker's claim that the seizure of the brick of marihuana in the kitchen was illegal because the police had "searched" for it (by going to the door of the kitchen and looking in) before making any arrest. The Court reasoned that when Mrs. Ker emerged from the kitchen it was reasonable for the officer to go to the door and look in, and that when he saw the brick of marihuana he was not engaged in any "search" at all. Once he had arrested the Kers, the actual seizure of the brick was lawful because "incident" to the arrest. 374 U. S., at 42-43.

Ker is distinguishable from *Coolidge* on at least the following grounds: in *Ker*, the Court found that "the officers entered the apartment for the purpose of arresting George Ker," rather than for purposes of seizure or search, 374 U. S., at 42-43; exigent circumstances justified the failure to obtain a search warrant; the discovery of the brick of marihuana was fortuitous; the marihuana was contraband easily destroyed; and it was in the immediate proximity of the Kers at the moment of their arrest so that the seizure was unquestionably lawful under the search incident law of the time, and might be lawful under the more restrictive standard of *Chimel v. California*, 395 U. S. 752. Not one of these elements was present in the case before us.

The seizure was therefore unconstitutional, and so was the subsequent search at the station house. Since evidence obtained in the course of the search was admitted at Coolidge's trial, the judgment must be reversed and the case remanded to the New Hampshire Supreme Court. *Mapp v. Ohio*, 367 U. S. 643.

D

In his dissenting opinion today, MR. JUSTICE WHITE marshals the arguments that can be made against our interpretation of the "automobile" and "plain view" exceptions to the warrant requirement. Beyond the unstartling proposition that when a line is drawn there is often not a great deal of difference between the situations closest to it on either side, there is a single theme that runs through what he has to say about the two exceptions. Since that theme is a recurring one in controversies over the proper meaning and scope of the Fourth Amendment, it seems appropriate to treat his views in this separate section, rather than piecemeal.

Much the most important part of the conflict that has been so notable in this Court's attempts over a hundred years to develop a coherent body of Fourth Amendment law has been caused by disagreement over the importance of requiring law enforcement officers to secure warrants. Some have argued that a determination by a magistrate of probable cause as a precondition of any search or seizure is so essential that the Fourth Amendment is violated whenever the police might reasonably have obtained a warrant but failed to do so. Others have argued with equal force that a test of reasonableness, applied after the fact of search or seizure when the police attempt to introduce the fruits in evidence, affords ample safeguard for the rights in question, so that "[t]he relevant test is not whether it is reasonable to procure

a search warrant, but whether the search was reasonable." ²⁹

Both sides to the controversy appear to recognize a distinction between search and seizures that take place on a man's property—his home or office—and those carried out elsewhere. It is accepted, at least as a matter of principle, that a search or seizure carried out on a suspect's premises without a warrant is *per se* unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of "exigent circumstances." ³⁰ As to other kinds of intrusions, however, there has been disagreement about the basic rules to be applied, as our cases concerning automobile searches, electronic surveillance, street searches and administrative searches make clear. ³¹

With respect to searches and seizures carried out on a suspect's premises, the conflict has been over the question of what qualifies as an "exigent circumstance." It might appear that the difficult inquiry would be when it is that the police can enter upon a person's property to seize his "person . . . papers, and effects," without prior judicial approval. The question of the scope of search and seizure once the police are on the premises would appear to be subsidiary to the basic issue of when intrusion is permissible. But the law has not developed in this fashion.

The most common situation in which Fourth Amendment issues have arisen has been that in which the police enter the suspect's premises, arrest him, and then

²⁹ *United States v. Rabinowitz*, *supra*, at 66

³⁰ See the cases cited in nn. 5-8, *supra*, and in the text at n. 25, *supra*.

³¹ See *Carroll v. United States*, *supra*, and cases discussed in Part II B above (automobiles); *Katz v. United States*, *supra* (electronic surveillance); *Terry v. Ohio*, 392 U. S. 1; *Sibron v. New York*, 392 U. S. 40 (street searches); *Camara v. Municipal Ct.*, 387 U. S. 523; *See v. Seattle*, 387 U. S. 541 (administrative searches).

carry out a warrantless search and seizure of evidence. Where there is a warrant for the suspect's arrest, the evidence seized may later be challenged either on the ground that the warrant was improperly issued because there was not probable cause,³² or on the ground that the police search and seizure went beyond that which they could carry out as in incident to the execution of the arrest warrant.³³ Where the police act without an arrest warrant, the suspect may argue that an arrest warrant was necessary, that there was no probable cause to arrest,³⁴ or that even if the arrest was valid, the search and seizure went beyond permissible limits.³⁵ Perhaps because each of these lines of attack offers a plethora of litigable issues, the more fundamental question of when the police may arrest a man in his house without a warrant has been little considered in the federal courts. This Court has chosen on a number of occasions to assume the validity of an arrest and decide the case before it on the issue of the scope of permissible warrantless search. *E. g.*, *Chimel v. California*, *supra*. The more common inquiry has therefore been: "Assuming a valid police entry for purposes of arrest, what searches and seizures may the police carry out without prior authorization by a magistrate?"

Two very broad, and sharply contrasting answers to this question have been assayed by this Court in the past. The answer of *Trupiano v. United States*, *supra*, was that no searches and seizures could be legitimated by the mere fact of valid entry for purposes of arrest, so long as there was no showing of special difficulties in

³² *E. g.*, *Giordenello v. United States*, 357 U. S. 480.

³³ *E. g.*, *Marron v. United States*, *supra*; *United States v. Rabowitz*, *supra*.

³⁴ *E. g.*, *Wong Sun v. United States*, 371 U. S. 471.

³⁵ *E. g.*, *Trupiano v. United States*, *supra*; *Warden v. Hayden*, *supra*; *Ker v. California*, *supra*.

obtaining a warrant for search and seizure. The contrasting answer in *Harris v. United States*, 331 U. S. 145, and *United States v. Rabinowitz*, *supra*, was that a valid entry for purposes of arrest served to legitimate warrantless searches and seizures throughout the premises where the arrest occurred, however spacious those premises might be.

The approach taken in *Harris* and *Rabinowitz* was open to the criticism that it made it so easy for the police to arrange to search a man's premises without a warrant that the Constitution's protection of a man's "effects" became a dead letter. The approach taken in *Trupiano*, on the other hand, was open to the criticism that it was absurd to permit the police to make an entry in the dead of night for purposes of seizing the "person" by main force, and then refuse them permission to seize objects lying around in plain sight. It is arguable that if the very substantial intrusion implied in the entry and arrest are "reasonable" in Fourth Amendment terms, then the less intrusive search incident to arrest must also be reasonable.

This argument against the *Trupiano* approach is of little force so long as it is assumed that the police must, in the absence of one of a number of defined exceptions based on "exigent circumstances," obtain an arrest warrant before entering a man's house to seize his person. If the Fourth Amendment requires a warrant to enter and seize the person, then it makes sense as well to require a warrant to seize other items that may be on the premises. The situation is different, however, if the police are under no circumstances required to obtain an arrest warrant before entering to arrest a person they have probable cause to believe has committed a felony. If no warrant is ever required to legitimate the extremely serious intrusion of a midnight entry to seize the person, then it can be argued plausibly that a warrant should

never be required to legitimate a very sweeping search incident to such an entry and arrest. If the arrest without a warrant is *per se* reasonable under the Fourth Amendment, then it is difficult to perceive why a search incident in the style of *Harris* and *Rabinowitz* is not *per se* reasonable as well.

It is clear, then, that the notion that the warrantless entry of a man's house in order to arrest him on probable cause is *per se* legitimate is in fundamental conflict with the basic principle of Fourth Amendment law that searches and seizures inside a man's house without warrant are *per se* unreasonable in the absence of some one of a number of well defined "exigent circumstances." This conflict came to the fore in *Chimel v. California*, *supra*. The Court there applied the basic rule that the "search incident to arrest" is an exception to the warrant requirement and that its scope must therefore be strictly defined in terms of the justifying "exigent circumstances." The exigency in question arises from the dangers of harm to the arresting officer and of destruction of evidence within the reach of the arrestee. Neither exigency can conceivably justify the far-ranging searches authorized under *Harris* and *Rabinowitz*. The answer of the dissenting opinion of Mr. JUSTICE WHITE in *Chimel*, supported by no decision of this Court, was that a warrantless entry for the purpose of arrest on probable cause is legitimate and reasonable no matter what the circumstances. 395 U. S., at 776-780. From this it was said to follow that the full-scale search incident to arrest was also reasonable since it was a lesser intrusion. 395 U. S., at 772-775.

The same conflict arises in this case. Since the police knew of the presence of the automobile and planned all along to seize it, there was no "exigent circumstance" to justify their failure to obtain a warrant. The application of the basic rule of Fourth Amendment law there-

fore requires that the fruits of the warrantless seizure be suppressed. MR. JUSTICE WHITE's dissenting opinion, however, argues once again that so long as the police could reasonably make a warrantless nighttime entry onto Coolidge's property in order to arrest him, with no showing at all of an emergency, then it is absurd to prevent them from seizing his automobile as evidence of the crime.

MR. JUSTICE WHITE takes a basically similar approach to the question whether the search of the automobile in this case can be justified under *Carroll v. United States*, *supra*, and *Chambers v. Maroney*, *supra*. *Carroll*, on its face, appears to be a classic example of the doctrine that warrantless searches are *per se* unreasonable in the absence of exigent circumstances. Every word in the opinion indicates the Court's adherence to the underlying rule and its care in delineating a limited exception. Read thus, the case quite evidently does not extend to the situation at bar. Yet if we take the viewpoint of a judge called on only to decide in the abstract, after the fact, whether the police have behaved "reasonably" under all the circumstances—in short if we simply ignore the warrant requirement—*Carroll* comes to stand for something more. The stopping of a vehicle on the open highway and a subsequent search amount to a major interference in the lives of the occupants. *Carroll* held such an interference to be reasonable without a warrant, given probable cause. It may be thought to follow a *fortiori* that the seizure and search here—where there was no stopping and the vehicle was unoccupied—were also reasonable, since the intrusion was less substantial, although there were no exigent circumstances whatever. Using reasoning of this sort, it is but a short step to the position that it is *never* necessary for the police to obtain a warrant before searching and seizing an automobile, provided that they have probable cause. And Mr. Jus-

TICE WHITE appears to adopt exactly this view when he proposes that the Court should "treat searches of automobiles as we do the arrest of a person."

If we were to accept MR. JUSTICE WHITE's view that warrantless entry for purposes of arrest and warrantless seizure and search of automobiles are *per se* reasonable, so long as the police have probable cause, it would be difficult to see the basis for distinguishing searches of houses and seizures of effects. If it is reasonable for the police to make a warrantless nighttime entry for the purpose of arresting a person in his bed, then surely it must be reasonable as well to make a warrantless entry to search for and seize vital evidence of a serious crime. If the police may, without a warrant, seize and search an unoccupied vehicle parked on the owner's private property, not being used for any illegal purpose, then it is hard to see why they need a warrant to seize and search a suitcase, a trunk, a shopping bag, or any other portable container in a house, garage, or back yard.

The fundamental objection, then, to the line of argument adopted by MR. JUSTICE WHITE in his dissent in this case and in *Chimel v. California*, *supra*, is that it proves too much. If we were to agree with MR. JUSTICE WHITE that the police may, whenever they have probable cause, make a warrantless entry for the purpose of making an arrest, and that seizures and searches of automobiles are likewise *per se* reasonable given probable cause, then by the same logic *any* search or seizure could be carried out without a warrant, and we would simply have read the Fourth Amendment out of the Constitution. Indeed, if MR. JUSTICE WHITE is correct that it has generally been assumed that the Fourth Amendment is not violated by the warrantless entry of a man's house for purposes of arrest, it might be wise to re-examine the assumption. Such a re-examination "would confront us with a grave constitutional question, namely, whether

the forceful nighttime entry into a dwelling to arrest a person reasonably believed within, upon probable cause that he had committed a felony, under circumstances where no reason appears why an arrest warrant could not have been sought, is consistent with the Fourth Amendment." *Jones v. United States*, 357 U. S. 493, 499-500.

None of the cases cited by MR. JUSTICE WHITE disposes of this "grave constitutional question." The case of *Warden v. Hayden, supra*, where the Court elaborated a "hot pursuit" justification for the police entry into the defendant's house without a warrant for his arrest, certainly stands by negative implication for the proposition that an arrest warrant is required in the absence of exigent circumstances. See also *Davis v. Mississippi*, 394 U. S. 721, 728; *Wong Sun v. United States*, 371 U. S. 471, 481-482. The Court of Appeals for the District of Columbia Circuit, sitting *en banc*, has unanimously reached the same conclusion.³⁶ But we find it unnecessary to decide the question in this case. The rule that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions,"³⁷ is not so frail that its continuing vitality depends on the fate of a supposed doctrine of warrantless arrest. The warrant requirement has been a valued part of our constitutional law for decades, and it has determined the result in scores and scores of cases in courts all over this country. It is not an inconvenience to be somehow "weighed" against the claims of police efficiency. It is, or should be, an important working part of our machinery of government, operating as a matter of course to check the "well-intentioned but mis-

³⁶ *United States v. Dorman*, 435 F. 2d 385 (CA DC 1969).

³⁷ *Katz v. United States, supra*, at 357.

takenly overzealous executive officers" ³⁸ who are a part of any system of law enforcement. If it is to be a true guide to constitutional police action, rather than just a pious phrase, then "[t]he exceptions cannot be enthroned into the rule." *United States v. Rabinowitz, supra*, at 80 (Frankfurter, J., dissenting). The confinement of the exceptions to their appropriate scope was the function of *Chimel v. California, supra*, where we dealt with the assumption that a search "incident" to a lawful arrest may encompass all of the premises where the arrest occurs, however spacious. The "plain view" exception is intimately linked with the search incident exception, as the cases discussed in Part C above have repeatedly shown. To permit warrantless plain-view seizures without limit would be to undo much of what was decided in *Chimel*, as the similar arguments put forward in dissent in the two cases indicate clearly enough.

Finally, a word about *Trupiano v. United States, supra*. Our discussion of "plain view" in Part C above corresponds with that given in *Trupiano*. Here, as in *Trupiano*, the determining factors are advance police knowledge of the existence and location of the evidence, police intention to seize it, and the ample opportunity for obtaining a warrant. See 334 U. S., at 707-708 and n. 27 *supra*. However, we do not "reinstate" *Trupiano*, since we cannot adopt all its implications. To begin with, in *Chimel v. California, supra*, we held that a search of the person of an arrestee and of the area under his immediate control could be carried out without a warrant. We did not indicate there, and do not suggest here, that the police must obtain a warrant if they anticipate that they will find specific evidence during the course of such a search. See n. 24 *supra*. And as to the automobile exception, we do not question the decisions of the Court in *Cooper v. California, supra*, and

³⁸ *Gould v. United States*, 255 U. S. 298, 304.

Chambers v. Maroney, *supra*, although both are arguably inconsistent with *Trupiano*.

MR. JUSTICE WHITE's dissent characterizes the coexistence of *Chimel*, *Cooper*, *Chambers*, and this case as "punitive," "extravagant," "inconsistent," "without apparent reason," "unexplained," and "inexplicable." It is urged upon us that we have here a "ready opportunity, one way or another, to bring clarity and certainty to a body of law that lower courts and law enforcement officials often find confusing." *Post*, at —. Presumably one of the ways in which MR. JUSTICE WHITE believes we might achieve clarity and certainty would be the adoption of his proposal that we treat entry for purposes of arrest and seizure of an automobile alike as *per se* reasonable on probable cause. Such an approach might dispose of this case clearly and certainly enough, but, as we have tried to show above, it would cast into limbo the whole notion of a Fourth Amendment warrant requirement. And it is difficult to take seriously MR. JUSTICE WHITE's alternative suggestion that clarity and certainty, as well as coherence and credibility, might also be achieved by modifying *Chimel* and overruling *Chambers* and *Cooper*. Surely, quite apart from his strong disagreement on the merits, he would take vehement exception to any such cavalier treatment of this Court's decisions.

Of course, it would be nonsense to pretend that our decision today reduces Fourth Amendment law to complete order and harmony. The decisions of the Court over the years point in differing directions and differ in emphasis. No trick of logic will make them all perfectly consistent. But it is no less nonsense to suggest, as does MR. JUSTICE WHITE, *post*, at — — —, that we cease today "to strive for clarity and consistency of analysis," or that we have "abandoned any attempt" to find reasoned distinctions in this area. The time is long

past when men believed that development of the law must always proceed by the smooth incorporation of new situations into a single coherent analytical framework. We need accept neither the "clarity and certainty" of a Fourth Amendment without a warrant requirement nor the facile consistency obtained by wholesale overruling of recently decided cases. A remark by MR. JUSTICE HARLAN concerning the Fifth Amendment is applicable as well to the Fourth:

"There are those, I suppose, who would put the 'liberal construction' approach of cases like *Miranda* [v. *Arizona*, 384 U. S. 436,] and *Boyd v. United States*, 116 U. S. 616 (1886), side-by-side with the balancing approach of *Schmerber* [v. *California*, 384 U. S. 757,] and perceive nothing more subtle than a set of constructional antinomies to be utilized as convenient bootstraps to one result or another. But I perceive in these cases the essential tension that springs from the uncertain mandate which this provision of the Constitution gives to this Court." *California v. Byers*, — U. S. —, — (concurring opinion).

We are convinced that the result reached in this case is correct, and that the principle it reflects—that the police must obtain a warrant when they intend to seize an object outside the scope of a valid search incident to arrest—can be easily understood and applied by courts and law enforcement officers alike. It is a principle that should work to protect the citizen without overburdening the police, and a principle that preserves and protects the guarantees of the Fourth Amendment.

III

Because of the prospect of a new trial, the efficient administration of justice counsels consideration of the second substantial question under the Fourth and Four-

teenth Amendments presented by this case. The petitioner contends that when the police obtained a rifle and articles of his clothing from his home on the night of Sunday, February 2, 1964, while he was being interrogated at the police station, they engaged in a search and seizure violative of the Constitution. In order to understand this contention, it is necessary to review in some detail the circumstances of the February 2 episode.

A

The lie detector test administered to Coolidge in Concord on the afternoon of the 2d was inconclusive as to his activities on the night of Pamela Mason's disappearance, but during the course of the test Coolidge confessed to stealing \$375 from his employer. After the group returned from Concord to Manchester, the interrogation about Coolidge's movements on the night of the disappearance continued, and Coolidge apparently made a number of statements which the police immediately checked out as best they could. The decision to send two officers to the Coolidge house to speak with Mrs. Coolidge was apparently motivated in part by a desire to check his story against whatever she might say, and in part by the need for some corroboration of his admission to the theft from his employer. The trial judge found as a fact, and the record supports him, that at the time of the visit the police knew very little about the weapon that had killed Pamela Mason. The bullet that had been retrieved was of small calibre, but the police were unsure whether the weapon was a rifle or a pistol. During the extensive investigation following the discovery of the body, the police had made it a practice to ask all those questioned whether they owned any guns, and to ask the owners for permission to run tests on those which met the very general description

of the murder weapon. The trial judge found as a fact that when the police visited Mrs. Coolidge on the night of the 2d, they were unaware of the previous visit during which Coolidge had shown other officers three guns, and that they were not motivated by a desire to find the murder weapon.

The two plainclothesmen asked Mrs. Coolidge whether her husband had been at home on the night of the murder victim's disappearance, and she replied that he had not. They then asked her if her husband owned any guns. According to her testimony at the pretrial suppression hearing, she replied, "Yes, I will get them in the bedroom." One of the officers replied, "We will come with you." The three went into the bedroom where Mrs. Coolidge took all four guns out of the closet. Her account continued:

"A. I believe I asked if they wanted the guns. One gentleman said, 'No;,' then the other gentleman turned around and said, 'We might as well take them.' I said, 'If you would like them, you may take them.'

"Q. Did you go further and say, 'We have nothing to hide.'?"

"A. I can't recall if I said that then or before. I don't recall.

"Q. But at some time you indicated to them that as far as you were concerned you had nothing to hide, and they might take what they wanted?"

"A. That was it.

"Q. Did you feel at that time that you had something to hide?"

"A. No."

The two policemen also asked Mrs. Coolidge what her husband had been wearing on the night of the dis-

appearance. She then produced four pairs of trousers and indicated that her husband had probably worn either of two of them on that evening. She also brought out a hunting jacket. The police gave her a receipt for the guns and the clothing, and, after a search of the Coolidge cars not here in issue, took the various articles to the police station.

B

The first branch of the petitioner's argument is that when Mrs. Coolidge brought out the guns and clothing, and then handed them over to the police, she was acting as an "instrument" of the officials, complying with a "demand" made by them. Consequently, it is argued, Coolidge was the victim of a search and seizure within the constitutional meaning of those terms. Since we cannot accept this interpretation of the facts, we need not consider the petitioner's further argument that Mrs. Coolidge could not or did not "waive" her husband's constitutional protection against unreasonable searches and seizures.

Had Mrs. Coolidge, wholly on her own initiative, sought out her husband's guns and clothing and then taken them to the police station to be used as evidence against him, there can be no doubt under existing law that the articles would later have been admissible in evidence. Cf. *Burdeau v. McDowell*, 256 U. S. 465. The question presented here is whether the conduct of the police officers at the Coolidge house was such as to make her actions their actions for purposes of the Fourth and Fourteenth Amendments and their attendant exclusionary rules. The test, as the petitioner's argument suggests, is whether Mrs. Coolidge, in light of all the circumstances of the case, must be regarded as having acted as an "instrument" or agent of the state when she produced her husband's belongings. Cf. *United*

States v. Goldberg, 330 F. 2d 30 (CA3), cert. denied 377 U. S. 953 (1964); *People v. Tarantino*, 45 Cal. 2d 590, 290 P. 2d 505 (1955); see *Byars v. United States*, 273 U. S. 28; *Gambino v. United States*, 275 U. S. 310.

In a situation like the one before us there no doubt always exist forces pushing the spouse to cooperate with the police. Among these are the simple but often powerful convention of openness and honesty, the fear that secretive behavior will intensify suspicion, and uncertainty as to what course is most likely to be helpful to the absent spouse. But there is nothing constitutionally suspect in the existence, without more, of these incentives to full disclosure or active cooperation with the police. The exclusionary rules were fashioned "to prevent, not to repair," and their target is official misconduct. They are "to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." *Elkins v. United States*, 364 U. S. 206, 217. But it is no part of the policy underlying the Fourth and Fourteenth Amendments to discourage citizens from aiding to the utmost of their ability in the apprehension of criminals. If, then, the exclusionary rule is properly applicable to the evidence taken from the Coolidge house on the night of February 2, it must be upon the basis that some type of unconstitutional police conduct occurred.

Yet it cannot be said that the police should have obtained a warrant for the guns and clothing before they set out to visit Mrs. Coolidge, since they had no intention of rummaging around among Coolidge's effects or of dispossessing him of any of his property. Nor can it be said that they should have obtained Coolidge's permission for a seizure they did not intend to make. There was nothing to compel them to announce to the suspect that they intended to question his wife about his movements on the night of the disappearance or about the theft from

his employer. Once Mrs. Coolidge had admitted them, the policemen were surely acting normally and properly when they asked her, as they had asked those questioned earlier in the investigation, including Coolidge himself, about any guns there might be in the house. The question concerning the clothes Coolidge had been wearing on the night of the disappearance was logical and in no way coercive. Indeed, one might doubt the competence of the officers involved had they not asked exactly the questions they did ask. And surely when Mrs. Coolidge of her own accord produced the guns and clothes for inspection, rather than simply describing them, it was not incumbent on the police to stop her or avert their eyes.

The crux of the petitioner's argument must be that when Mrs. Coolidge asked the policemen whether they wanted the guns, they should have replied that they could not take them, or have first telephoned Coolidge at the police station and asked his permission to take them, or have asked her whether she had been authorized by her husband to release them. Instead, after one policeman had declined the offer, the other turned and said, "We might as well take them," to which Mrs. Coolidge replied, "If you would like them, you may have them."

In assessing the claim that this course of conduct amounted to a search and seizure, it is well to keep in mind that Mrs. Coolidge described her own motive as that of clearing her husband, and that she believed that she had nothing to hide. She had seen her husband himself produce his guns for two other policemen earlier in the week, and there is nothing to indicate that she realized that he had offered only three of them for inspection on that occasion. The two officers who questioned her behaved, as her own testimony shows, with perfect courtesy. There is not the slightest implication of an attempt on their part to coerce or dominate her, or, for that matter, to direct her actions by the more subtle techniques of

suggestion that are available to officials in circumstances like these. To hold that the conduct of the police here was a search and seizure would be to hold, in effect, that a criminal suspect has constitutional protection against the adverse consequences of a spontaneous, good-faith effort by his wife to clear him of suspicion.³⁹

The judgment is reversed and the case is remanded to the Supreme Court of New Hampshire for further proceedings not inconsistent with this opinion.

It is so ordered.

³⁹ Cf. Note, 79 Harv. L. Rev. 1513, 1519 (1966); Note, 19 Stan. L. Rev. 608 (1967).

SUPREME COURT OF THE UNITED STATES

No. 323.—OCTOBER TERM, 1970

Edward H. Coolidge, Jr., Petitioner, v. New Hampshire.	}	On Writ of Certiorari to the Supreme Court of New Hampshire.
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[June 21, 1971]

MR. JUSTICE HARLAN, concurring.

From the several opinions that have been filed in this case it is apparent that the law of search and seizure is due for an overhauling. State and federal law enforcement officers and prosecutorial authorities must find quite intolerable the present state of uncertainty, which extends even to such an everyday question as the circumstances under which police may enter a man's property to arrest him and seize a vehicle believed to have been used during the commission of a crime.

I would begin this process of re-evaluation by overruling *Mapp v. Ohio*, 367 U. S. 643 (1961), and *Ker v. California*, 374 U. S. 23 (1963). The former of these cases made the federal "exclusionary rule" applicable to the States. The latter forced the States to follow all the ins and outs of this Court's Fourth Amendment decisions, handed down in federal cases.

In combination *Mapp* and *Ker* have been primarily responsible for bringing about serious distortions and incongruities in this field of constitutional law. Basically these have had two aspects, as I believe an examination of our more recent opinions and certiorari docket will show. First, the States have been put in a federal mold with respect to this aspect of criminal law enforcement, thus depriving the country of the opportunity to observe the effects of different procedures in similar settings. See,

e. g., Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. Chi. L. Rev. 665 (1970), suggesting that the assumed "deterrent value" of the exclusionary rule has never been adequately demonstrated or disproved, and pointing out that because of *Mapp* all comparative statistics are 10 years old and no new ones can be obtained. Second, in order to leave some room for the States to cope with their own diverse problems, there has been generated a tendency to relax federal requirements under the Fourth Amendment, which now govern state procedures as well. For an illustration of that tendency in another constitutional field, again resulting from the infelicitous "incorporation" doctrine, see *Williams v. Florida*, 399 U. S. 78 (1970). Until we face up to the basic constitutional mistakes of *Mapp* and *Ker*, no solid progress in setting things straight in search and seizure law will, in my opinion, occur.

But for *Mapp* and *Ker*, I would have little difficulty in voting to sustain this conviction, for I do not think that anything the State did in this case could be said to offend those values which are "at the core of the Fourth Amendment." *Wolf v. Colorado*, 338 U. S. 25, 27 (1949); cf. *Irvine v. California*, 347 U. S. 128 (1954); *Rochin v. California*, 342 U. S. 165 (1952).

Because of *Mapp* and *Ker*, however, this case must be judged in terms of federal standards, and on that basis I concur, although not without difficulty, in Parts I, II-D, and III of the Court's opinion and in the judgment of the Court.* It must be recognized that the case is a close one. The reason I am tipped in favor of Mr. JUSTICE STEWART's position is that a contrary result in this

*Because of my views as to the retroactivity of *Chimel v. California*, 395 U. S. 752 (1969), I do not believe the seizure of the Pontiac can be upheld as incident to Coolidge's arrest. See my separate opinion in *Mackey v. United States*, — U. S. —, — (1971).

case would, I fear, go far towards relegating the warrant requirement of the Fourth Amendment to a position of little consequence in federal search and seizure law, a course which seems to me opposite to the one we took in *Chimel v. California*, 395 U. S. 752 (1969), two Terms ago.

Recent scholarship has suggested that in emphasizing the warrant requirement over the reasonableness of the search the Court has "stood the fourth amendment on its head" from a historical standpoint. T. Taylor, *Two Studies in Constitutional Interpretation* 23-24 (1969). This issue is perhaps most clearly presented in the case of a warrantless entry into a man's home to arrest him on probable cause. The validity of such entry was left open in *Jones v. United States*, 357 U. S. 493, 499-500 (1957), and although my Brothers WHITE and STEWART both feel that their contrary assumptions on this point are at the root of their disagreement in this case, *ante*, pp. 33-34; *post*, pp. 1-2, 11-12, the Court again leaves the issue open. *Ante*, p. 36. In my opinion it does well to do so. This matter should not be decided in a state case not squarely presenting the issue and where it was not fully briefed and argued. I intimate no view on this subject, but until it is ripe for decision, hopefully in a federal case, I am unwilling to lend my support to setting back the trend of our recent decisions.

SUPREME COURT OF THE UNITED STATES

No. 323.—OCTOBER TERM, 1970

Edward H. Coolidge, Jr., Petitioner, v. New Hampshire.	}	On Writ of Certiorari to the Supreme Court of New Hampshire.
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[June 21, 1971]

MR. CHIEF JUSTICE BURGER, dissenting in part and concurring in part.

I join the dissenting opinion of MR. JUSTICE WHITE and in Parts II and III of MR. JUSTICE BLACK's dissenting opinion. I also agree with most of what is said in Part I of MR. JUSTICE BLACK's opinion, but I am not prepared to accept the proposition that the Fifth Amendment requires the exclusion of evidence seized in violation of the Fourth Amendment. I join in Part III of MR. JUSTICE STEWART's opinion.

This case illustrates graphically the monstrous price we pay for the Exclusionary Rule in which we seem to have imprisoned ourselves. See my dissent in *Bivens v. Six Unknown Named Agents of the Federal Narcotics Bureau*.

On the merits of the case I find not the slightest basis in the record to reverse this conviction. Here again the Court reaches out, strains and distorts rules which were showing some signs of stabilizing, and directs a new trial which will be held more than seven years after the criminal acts charged.

Mr. Justice Stone, of the Minnesota Supreme Court, called the kind of judicial functioning in which the Court indulges today "bifurcating elements too infinitesimal to be split."

STATEMENT OF THE JURY

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Case No. 10,000
The People of the District of Columbia
vs.
John Doe
Defendant

The jury, after having heard the evidence and the arguments of the attorneys, find that the defendant is guilty of the crime charged in the indictment. The jury further finds that the defendant is deserving of the punishment provided by law for this crime. The jury therefore recommends that the defendant be sentenced to the punishment provided by law for this crime.

The jury further finds that the defendant is deserving of the punishment provided by law for this crime. The jury therefore recommends that the defendant be sentenced to the punishment provided by law for this crime.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 323.—OCTOBER TERM, 1970

Edward H. Coolidge, Jr., Petitioner, v. New Hampshire.	}	On Writ of Certiorari to the Supreme Court of New Hampshire.
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[June 21, 1971]

MR. JUSTICE BLACK, concurring and dissenting.

After a jury trial in a New Hampshire state court, petitioner was convicted of murder and sentenced to life imprisonment. Holding that certain evidence introduced by the State was seized during an "unreasonable" search and that the evidence was inadmissible under the judicially created exclusionary rule of the Fourth Amendment, the majority reverses that conviction. Believing that the search and seizure here was reasonable and that the Fourth Amendment properly construed contains no such exclusionary rule, I dissent.

The relevant facts are these. Pamela Mason, a 14-year-old school girl, lived with her mother and younger brother in Manchester, New Hampshire. She occasionally worked after school as a baby sitter and sought such work by posting a notice on a bulletin board in a local laundromat. On January 13, 1964, she arrived home from school about 4:15 p. m. Pamela's mother told her that a man had called seeking a baby sitter for that evening and said that he would call again later. About 4:30 p. m., after Pamela's mother had left for her job as a waitress at a nearby restaurant, Pamela received a phone call. Her younger brother, who answered the call but did not overhear the conversation, later reported that

the caller was a man. After the call, Pamela prepared dinner for her brother and herself, then left the house about 6 p. m. Her family never again saw her alive. Eight days later, on January 21, 1964, Pamela's frozen body was discovered in a snow drift beside an interstate highway a few miles from her home. Her throat had been slashed and she had been shot in the head. Medical evidence showed that she died some time between 8 and 10 p. m. on January 13, the night she left home.

A manhunt ensued. Two witnesses informed the police that about 9:30 p. m. on the night of the murder they had stopped to offer assistance to a man in a 1951 Pontiac automobile which was parked beside the interstate highway near the point where the little girl's dead body was later found. Petitioner came under suspicion seven days after the body was discovered when one of his neighbors reported to the police that petitioner had been absent from his home between 5 and 11 p. m. on January 13, the night of the murder. Petitioner owned a 1951 Pontiac automobile that matched the description of the car which the two witnesses reported seeing parked where the girl's body had been found. The police first talked with petitioner at his home on the evening of January 28, fifteen days after the girl was killed, and arranged for him to come to the police station the following Sunday, February 2, 1964. He went to the station that Sunday and answered questions concerning his activities on the night of the murder, telling the police that he had been shopping in a neighboring town at the time the murder was committed. During questioning, petitioner confessed to having committed an unrelated larceny from his employer and was held overnight at the police station in connection with that offense. On the next day, he was permitted to go home.

While petitioner was being questioned at the police station on February 2, two policemen went to petitioner's home to talk with his wife. They asked what firearms the petitioner owned and his wife produced two shotguns and two rifles which she voluntarily offered to the police. Upon examination the University of Rhode Island Criminal Investigation Laboratory concluded that one of the firearms, a Mossberg .22 caliber rifle, had fired the bullet found in the murdered girl's brain.

Petitioner admitted that he was a frequent visitor to the laundromat where Pamela posted her babysitting notice and that he had been there on the night of the murder. The following day a knife belonging to petitioner, which could have inflicted the murdered girl's knife wounds, was found near that laundromat. The police also learned that petitioner had unsuccessfully contacted four different persons before the girl's body had been discovered in an attempt to fabricate an alibi for the night of January 13.

On February 19, 1964, all this evidence was presented to the state attorney general who was authorized under New Hampshire law to issue arrest and search warrants. The attorney general considered the evidence and issued a warrant for petitioner's arrest and four search warrants including a warrant for the seizure and search of petitioner's Pontiac automobile.

On the day the warrants issued, the police went to the petitioner's residence and placed him under arrest. They took charge of his 1951 Pontiac which was parked in plain view in the driveway in front of the house, and, two hours later, towed the car to the police station. During the search of the automobile at the station, the police obtained vacuum sweepings of dirt and other fine particles which matched like sweepings taken from the clothes of the murdered girl. Based on the similarity be-

tween the sweepings taken from petitioner's automobile and those taken from the girl's clothes, experts who testified at trial concluded that Pamela had been in the petitioner's car. The rifle given to the police by petitioner's wife was also received in evidence.

Petitioner challenges his conviction on the ground that the rifle obtained from his wife and the vacuum sweepings taken from his car were seized in violation of the Fourth Amendment and were improperly admitted at trial. With respect to the rifle voluntarily given to the police by petitioner's wife, the majority holds that it was properly received in evidence. I agree. But the Court reverses petitioner's conviction on the ground that the sweepings taken from his car were seized during an illegal search and for this reason the admission of the sweepings into evidence violated the Fourth Amendment. I dissent.

I

The Fourth Amendment prohibits unreasonable searches and seizures. The Amendment says nothing about consequences. It certainly nowhere provides for the exclusion of evidence as the remedy for violation. The Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." No examination of that text can find an exclusionary rule by a mere process of construction. Apparently the first suggestion that the Fourth Amendment somehow embodied a rule of evidence came in Justice Bradley's majority opinion in *Boyd v. United States*, 116 U. S. 616 (1886). The holding in that case was that ordinarily a person may not be compelled to

produce his private books and papers for use against him as proof of crime. That decision was a sound application of accepted principles of common law and the command of the Fifth Amendment that no person shall be compelled to be a witness against himself. But Justice Bradley apparently preferred to formulate a new exclusionary rule from the Fourth Amendment rather than rely on the already existing exclusionary rule contained in the language of the Fifth Amendment. His opinion indicated that compulsory production of such evidence at trial violated the Fourth Amendment. Mr. Justice Miller, with whom Chief Justice Waite joined, concurred solely on the basis of the Fifth Amendment, and explicitly refused to go along with Justice Bradley's novel reading of the Fourth Amendment. It was not until 1914, some twenty-eight years after *Boyd* and when no member of the *Boyd* Court remained, that the Court in *Weeks v. United States*, 232 U. S. 383, stated that the Fourth Amendment itself barred the admission of evidence seized in violation of the Fourth Amendment. The *Weeks* opinion made no express confession of a break with the past. But if it was merely a proper reading of the Fourth Amendment, it seems strange that it took this Court nearly 125 years to discover the true meaning of those words. The truth is that the source of the exclusionary rule simply cannot be found in the Fourth Amendment. That Amendment did not when adopted, and does not now, contain any constitutional rule barring the admission of illegally seized evidence.

In striking contrast to the Fourth Amendment, the Fifth Amendment states in express, unambiguous terms that no person "shall be compelled in any criminal case to be a witness against himself." The Fifth Amendment in and of itself directly and explicitly commands its own exclusionary rule—a defendant cannot be compelled to

give evidence against himself. Absent congressional action taken pursuant to the Fourth Amendment, if evidence is to be excluded, it must be under the Fifth Amendment, not the Fourth. That was the point so ably made in the concurring opinion of Justice Miller, joined by Chief Justice Waite, in *Boyd v. United States*, *supra*, and that was the thrust of my concurring opinion in *Mapp v. Ohio*, 367 U. S. 643 (1961).

The evidence seized by breaking into Mrs. Mapp's house and the search of all her possessions, was excluded from evidence, not by the Fourth Amendment which contains no exclusionary rule, but by the Fifth Amendment which does. The introduction of such evidence compels a man to be a witness against himself, and evidence so compelled must be excluded under the Fifth Amendment, not because the Court says so, but because the Fifth Amendment commands it.

The Fourth Amendment provides a constitutional means by which the Government can act to obtain evidence to be used in criminal prosecutions. The people are obliged to yield to a proper exercise of authority under that Amendment.¹ Evidence properly seized under the Fourth Amendment of course is admissible at trial. But nothing in the Fourth Amendment provides that evidence seized in violation of that Amendment must be excluded.

The majority holds that evidence it views as improperly seized in violation of its ever changing concept of the Fourth Amendment is inadmissible. The majority treats the exclusionary rule as a judge-made rule of evidence designed and utilized to enforce the majority's own notions of proper police conduct. The Court today

¹ There are of course certain searches which constitutionally cannot be authorized even with a search warrant or subpoena. See, e. g., *Boyd v. United States*, 116 U. S. 616 (1886); *Rochin v. California*, 342 U. S. 165, 174 (1952) (BLACK, J., concurring); *Schmerber v. California*, 384 U. S. 757, 773 (1966) (BLACK, J., dissenting).

announces its new rules of police procedure in the name of the Fourth Amendment, then holds that evidence seized in violation of the new "guidelines" is automatically inadmissible at trial. The majority does not purport to rely on the Fifth Amendment to exclude the evidence in this case. Indeed, it could not. The majority prefers instead to rely on "changing times" and the Court's role as it sees it, as the administrator in charge of regulating the contacts of officials with citizens. The majority states that in the absence of a better means of regulation, it applies a court-created rule of evidence.

I readily concede that there is much recent precedent for the majority's present announcement of yet another new set of police operating procedures. By invoking this rulemaking power found not in the words but somewhere in the "spirit" of the Fourth Amendment, the Court has expanded that Amendment beyond recognition. And each new step is justified as merely a logical extension of the step before.

It is difficult for me to believe the Founders intended that the police be required to prove a defendant's guilt in a "little trial" before the issuance of a search warrant. But see *Aguilar v. Texas*, 378 U. S. 108 (1964); *Spinelli v. United States*, 393 U. S. 410 (1969). No such proceeding was required before or after the adoption of the Fourth Amendment, until this Court decided *Aguilar* and *Spinelli*. Likewise, eavesdroppers were deemed to be competent witnesses in both English and American courts up until this Court in its Fourth Amendment "rule-making" capacity undertook to lay down rules for electronic surveillance. *Berger v. New York*, 388 U. S. 41, 70 (1967) (BLACK, J., dissenting); *Katz v. United States*, 389 U. S. 347, 364 (1967) (BLACK, J., dissenting). The reasonableness of a search incident to an arrest, extend-

ing to areas under the control of the defendant and areas where evidence may be found, was an established tenet of English common law, and American constitutional law after adoption of the Fourth Amendment—that is, until *Chimel v. California*, 395 U. S. 752 (1969). The broad, abstract, and ambiguous concept of “privacy” is now unjustifiably urged as a comprehensive substitute for the Fourth Amendment’s guarantee against “unreasonable searches and seizures.” *Griswold v. Connecticut*, 381 U. S. 479 (1965).

Our Government is founded upon a written Constitution. The draftsmen expressed themselves in careful and measured terms corresponding with the immense importance of the powers delegated to them. The Framers of the Constitution, and the people who adopted it, must be understood to have used words in their natural meaning, and to have intended what they said. The Constitution itself contains the standards by which the seizure of evidence challenged in the present case and the admissibility of that evidence at trial is to be measured in the absence of congressional legislation. It is my conclusion that both the seizure of the rifle offered by petitioner’s wife and the seizure of the automobile at the time of petitioner’s arrest were consistent with the Fourth Amendment and that the evidence so obtained under the circumstances shown in the record in this case could not be excluded under the Fifth Amendment.

II

The majority holds that the warrant authorizing the seizure and search of petitioner’s automobile was constitutionally defective and void. With respect to search warrants, the Fourth Amendment provides that “no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The majority concedes that the police did show probable cause for the issuance of the warrant. The majority does not contest that the warrant particularly described the place to be searched, and the thing to be seized.

But compliance with state law and the requirements of the Fourth Amendment apparently is not enough. The majority holds that the state attorney general's connection with the investigation automatically rendered the search warrant invalid. In the first place, there is no language in the Fourth Amendment which provides any basis for the disqualification of the state attorney general to act as a magistrate. He is a state official of high office elected by the people. The Fourth Amendment does not indicate that his position of authority over state law enforcement renders him ineligible to issue warrants upon a showing of probable cause supported by oath or affirmation. The majority's argument proceeds on the "little trial" theory that the magistrate is to sit as a judge and weigh the evidence and practically determine guilt or innocence before issuing a warrant. There is nothing in the Fourth Amendment to support such a magnified view of the magistrate's authority. The state attorney general was not barred by the Fourth Amendment or any other constitutional provision from issuing the warrant.

In the second place, the New Hampshire Supreme Court held in effect that the state attorney general's participation in the investigation of the case at the time he issued the search warrant was "harmless error" if it was error at all. I agree. It is difficult to imagine a clearer showing of probable cause. There was no possibility of prejudice because there was no room for discretion. Indeed, it could be said that a refusal to issue a warrant on the showing of probable cause made in this case would have been an abuse of discretion. In light of the showing made by the police, there is no reasonable

possibility that the state attorney general's own knowledge of the investigation contributed to the issuance of the warrant. I see no error in the state attorney general's action. But even if there was error, it was harmless beyond reasonable doubt. See *Harrington v. California*, 395 U. S. 250 (1969); *Chapman v. California*, 386 U. S. 18 (1967).

Therefore, it is my conclusion that the warrant authorizing the seizure and search of petitioner's automobile was constitutional under the Fourth Amendment, and that the evidence obtained during that search cannot be excluded under the Fifth Amendment. Moreover, I am of the view that, even if the search warrant had not issued, the search in this case nonetheless would have been constitutional under all three of the principles considered and rejected by the majority.

III

It is important to point out that the automobile itself was evidence and was seized as such. Prior to the seizure the police had been informed by two witnesses that on the night of the murder they had seen an automobile parked near the point where the little girl's dead body was later discovered. Their description of the parked automobile matched petitioner's car. At the time of the seizure the identification of petitioner's automobile by the witnesses as the car they had seen on the night of the murder was yet to be made. The police had good reason to believe that the identification would be an important element of the case against the petitioner. Preservation of the automobile itself as evidence was a reasonable motivation for its seizure. Considered in light of the information in the hands of the New Hampshire police at the time of the seizure, I conclude that the seizure and search were constitutional, even had there been no search warrant, for the following among other reasons.

A

First, the seizure of petitioner's automobile was valid as incident to a lawful arrest. The majority concedes that there was probable cause for petitioner's arrest. Upon arriving at petitioner's residence to make that arrest, the police saw petitioner's automobile which they knew fitted the description of the car observed by two witnesses at the place where the murdered girl's body had been found. The police arrested the petitioner and seized the automobile. The majority holds that because the police had to go into petitioner's residence in order to place petitioner under arrest, the contemporaneous seizure of the automobile outside the house was not incident to that arrest. I cannot accept this elevation of form over reason.

After stating that *Chimel v. California*, 395 U. S. 752 (1969), is inapplicable to this case, the majority goes on to formulate and apply a *per se* rule reaching far beyond *Chimel*. To do so, the majority employs a classic *non sequitur*. Because this Court has held that police arresting a defendant on the street in front of his house cannot go into that house and make a general search, it follows, says the majority, that the police having entered a house to make an arrest cannot step outside the house to seize clearly visible evidence. Even though the police, upon entering a doorway to make a valid arrest, would be authorized under the pre-*Chimel* law the majority purports to apply, to make a five-hour search of a four-room apartment, see *Harris v. United States*, 331 U. S. 145 (1947), the majority holds that the police could not step outside the doorway to seize evidence they passed on their way in. The majority reasons that as the doorway locks the policeman out, once entered, it must lock him in.

The test of reasonableness cannot be governed by such arbitrary rules. Each case must be judged on its own particular facts. Here, there was no general exploration, only a direct seizure of important evidence in plain view from both inside as well as outside the house. On the facts of this case, it is my opinion that the seizure of petitioner's automobile was incident to his arrest and was reasonable under the terms of the Fourth Amendment.

B

Moreover, under our decision last Term in *Chambers v. Maroney*, 399 U. S. 42 (1970), the police were entitled not only to seize petitioner's car but also to search the car after it had been taken to the police station. The police had probable cause to believe that the car had been used in the commission of the murder and that it contained evidence of the crime. Under *Carroll v. United States*, 267 U. S. 132 (1925), and *Chambers v. Maroney*, *supra*, such belief was sufficient justification for the seizure and the search of petitioner's automobile.

The majority reasons that the *Chambers* and *Carroll* rationale, based on the mobility of automobiles, is inapplicable here because the petitioner's car could have been placed under guard and, thereby, rendered immobile. But this Court explicitly rejected such reasoning in *Chambers*: "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. . . . The probable-cause factor still obtained at the station house and so did the mobility of the car" 399 U. S., at 52. This Court held there that the delayed search at the station house,

as well as an immediate search at the time of seizure, was reasonable under the Fourth Amendment.

As a second argument for holding that the *Chambers* decision does not apply to this case, the majority reasons that the evidence could not have been altered or the car moved because petitioner was in custody and his wife was accompanied by police, at least until the police towed the car to the station. But the majority's reasoning depends on two assumptions: first, that the police should, or even could, continue to keep petitioner's wife effectively under house arrest; and, second, that no one else had any motivation to alter or remove the car. I cannot accept the first assumption, nor do I believe that the police acted unreasonably in refusing to accept the second.²

² The majority attempts to rely on *Preston v. United States*, 376 U. S. 364 (1964), to support its holding that the police could not search petitioner's automobile at the station house. But this case is not *Preston*, nor is it controlled by *Preston*. The police arrested *Preston* for vagrancy. No claim was made that the police had any authority to hold his car in connection with that charge. The fact that the police had custody of *Preston's* car was totally unrelated to the vagrancy charge for which they arrested him; so was their subsequent search of the car. Here the officers arrested petitioner for murder. They seized petitioner's car as evidence of the crime for which he was arrested. Their subsequent search of the car was directly related to the reason petitioner was arrested and the reason his car had been seized and, therefore, was valid under this Court's decision in *Cooper v. California*, 386 U. S. 58 (1967).

My Brother WHITE points out that the police in the present case not only searched the car immediately upon taking it to the station house, but also searched it 11 months and 14 months after seizure. We held in *Cooper*, where the search occurred one week after seizure, that the Fourth Amendment is not violated by the examination or search of a car validly held by officers for use as evidence in a pending trial. In my view the police are entitled to search a car whether detained for a week or for a year where that car is being properly held as relevant evidence of the crime charged.

C

I believe the seizure of petitioner's automobile was valid under the well established right of the police to seize evidence in plain view at the time and place of arrest. The majority concedes that the police were rightfully at petitioner's residence to make a valid arrest at the time of the seizure. To use the majority's words, the "initial intrusion" which brought the police within plain view of the automobile was legitimate. The majority also concedes that the automobile was "plainly visible both from the street and from inside the house where Coolidge was actually arrested," *ante*, at 3, and that the automobile itself was evidence which the police had probable cause to seize. *Ante*, at 20. Indeed, the majority appears to concede that the seizure of petitioner's automobile was valid under the doctrine upholding seizures of evidence in plain view of the scene of arrest, at least as it stood before today. *Ante*, at 21 n. 24.

However, even after conceding that petitioner's automobile itself was evidence of the crime, that the police had probable cause to seize it as such, and that the automobile was in plain view at the time and place of arrest, the majority holds the seizure to be a violation of the Fourth Amendment because the discovery of the automobile was not "inadvertent." The majority confidently states: "What the 'plain view' cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused." But the prior holdings of this Court not only fail to support the majority's statement, they flatly contradict it. One need look no further than the cases cited in the majority opinion to discover the invalidity of that assertion.

In one of these cases, *Ker v. California*, 374 U. S. 23 (1963), the police observed the defendant's participation in an illegal marihuana transaction, then went to his apartment to arrest him. After entering the apartment, the police saw and seized a block of marihuana as they placed the defendant under arrest. This Court upheld that seizure on the ground that the police were justifiably in the defendant's apartment to make a valid arrest, there was no search because the evidence was in plain view, and the seizure of such evidence was authorized when incident to a lawful arrest. The discovery of the marihuana there could hardly be described as "inadvertent."³

In *Marron v. United States*, 275 U. S. 192 (1927), also cited by the majority, the Court upheld the seizure of business records as being incident to a valid arrest for operating an illegal retail whiskey enterprise. The records were discovered in plain view. I cannot say that the seizure of business records from a place of business

³ The facts in *Ker* undermine the majority's attempt to distinguish it from the instant case. The arresting officer there learned from other policemen that Ker had been observed meeting with a known marihuana supplier. The arresting officer had received information at various times over an eight-month period that Ker was selling marihuana from his apartment and that he was securing this marihuana from the known supplier. The arresting officer had a "mug" photograph of Ker at the time of the arrest and testified that for at least two months he had received information as to Ker's marihuana activities from a named informant who had previously given information leading to three other arrests and whose information was believed to be reliable. The arresting officer did not know whether Ker would be present at his apartment on the night of arrest. The officer had neither an arrest nor a search warrant. He entered Ker's apartment, placed Ker under arrest, and seized the block of marihuana in plain view in the adjoining room. This Court held that the seizure was reasonable and therefore valid under the Fourth Amendment.

during the course of an arrest for operating an illegal business was "inadvertent."⁴

The majority confuses the historically justified right of the police to seize visible evidence of the crime in open view at the scene of arrest with the "plain view" exception to the requirement of particular description in search warrants. The majority apparently reasons that unless the seizure made pursuant to authority conferred by a warrant is limited to the particularly described object of seizure, the warrant will become a general writ of assistance. Evidently, as a check on the requirement of particular description in search warrants, the majority announces a new rule that items not named in a warrant cannot be seized unless their discovery was unanticipated or "inadvertent."⁵ The majority's concern is with the

⁴ The majority correctly notes, *ante*, at 20, that this Court in *Warden v. Hayden*, 387 U. S. 294 (1967), flatly rejected the distinction for purposes of the Fourth Amendment between "mere evidence" and contraband, a distinction which the majority appears to me to reinstate at another point in its opinion, *ante*, at 26 and 28.

⁵ The cases cited by the majority simply do not support the majority's new rule. For instance, when the police in *Steele v. United States*, 267 U. S. 498 (1925), entered a warehouse under the authority of a search warrant issued on a showing of probable cause that the Prohibition Act was being violated and naming "cases of whiskey" as the objects of search, it can scarcely be said that their discovery and seizure of barrels of whiskey and bottles and bottling equipment in plain view was "inadvertent."

The majority states that the seizure in *Warden v. Hayden*, *supra*, was justified because the police "inadvertently" came across the evidence while in hot pursuit of a fleeing suspect. In that case the police answered the call of two witnesses who stated that an armed robber had just held up a business. The witnesses described the robber and the clothes he was wearing. They had followed the robber to a particular house. The police searched the house and seized (1) a shotgun and a pistol found in a toilet on the second floor; (2) ammunition for the pistol and a cap like the one worn by the robber, both found beneath the mattress in the

scope of the intrusion authorized by a warrant. But the right to seize items properly subject to seizure because in open view at the time of arrest is quite independent of any power to search for such items pursuant to a warrant. The entry in the present case did not depend for its authority on a search warrant but was concededly authorized by probable cause to effect a valid arrest. The intrusion did not exceed that authority. The intrusion was limited in scope to the circumstances which justified the entry in the first place—the arrest of petitioner. There was no general search; indeed, there was no search at all. The automobile itself was evidence properly subject to seizure and was in open view at the time and place of arrest.*

Only rarely can it be said that evidence seized incident to an arrest is truly unexpected or inadvertent. Indeed, if the police officer had no expectation of discovering weapons, contraband, or other evidence, he would make no search. It appears to me that the rule adopted by the Court today, for all practical purposes, abolishes seizure incident to arrest. The majority rejects the test of reasonableness provided in the Fourth Amendment and

defendant's bedroom; and (3) a jacket and trousers of the type the fleeing man was said to have worn, found in a washing machine in the basement. It is quite difficult for me to accept the majority's characterization of these discoveries as "inadvertent."

See also *United States v. Lee*, 274 U. S. 559 (1927), another case cited by the majority, where Coast Guard officers, with probable cause to believe that a boat was being used to violate the Prohibition Act, shined a search light across the deck and discovered illicit whiskey. The admission of testimony regarding that discovery was upheld by this Court against a Fourth Amendment challenge, although the discovery could hardly be termed "inadvertent."

* Moreover, what a person knowingly exposes to the public is not a subject of Fourth Amendment protection. See *Lewis v. United States*, 385 U. S. 206, 210 (1966); *United States v. Lee*, 274 U. S. 559, 563 (1927); *Hester v. United States*, 265 U. S. 57 (1924).

substitutes a *per se* rule—if the police could have obtained a warrant and did not, the seizure, no matter how reasonable, is void. But the Fourth Amendment does not require that every search be made pursuant to a warrant. It prohibits only “unreasonable searches and seizures.” The relevant test is not the reasonableness of the opportunity to procure a warrant, but the reasonableness of the seizure under all the circumstances. The test of reasonableness cannot be fixed by *per se* rules; each case must be decided on its own facts.

For all the reasons stated above, I believe the seizure and search of petitioner’s car was reasonable and, therefore, authorized by the Fourth Amendment. The evidence so obtained violated neither the Fifth Amendment which does contain an exclusionary rule, nor the Fourth Amendment which does not. The jury of petitioner’s peers, as conscious as we of the awesome gravity of their decision, heard that evidence and found the petitioner guilty of murder. I cannot in good conscience upset that verdict.

MR. JUSTICE BLACKMUN joins MR. JUSTICE BLACK in Parts II and III of this opinion and in that portion of Part I thereof which is to the effect that the Fourth Amendment supports no exclusionary rule.

SUPREME COURT OF THE UNITED STATES

No. 323.—OCTOBER TERM, 1970

Edward H. Coolidge, Jr., Petitioner, v. New Hampshire.	}	On Writ of Certiorari to the Supreme Court of New Hampshire.
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[June 21, 1971]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE joins, concurring and dissenting.

I would affirm the judgment. In my view, Coolidge's Pontiac was lawfully seized as evidence of the crime in plain sight and thereafter was lawfully searched under *Cooper v. California*, 386 U. S. 58 (1967). I am therefore in substantial disagreement with Parts II-C and II-D of the Court's opinion. Neither do I agree with Part II-B, and I can concur only in the result as to Part III.

I

The Fourth Amendment commands that the public shall be secure in their "persons, houses, papers, and effects, against unreasonable searches and seizures" As to persons, the overwhelming weight of authority is that a police officer may make an arrest without a warrant when he has probable cause to believe the suspect has committed a felony.¹ The general rule also is that

¹ This was the common law rule. 1 J. Stephen, *A History of Criminal Law of England* 193 (1883); 2 M. Hale, *Historia Placitorum Coronae* 72-104 (new ed. 1800). It is also the constitutional rule. In *Carroll v. United States*, 267 U. S. 132 (1925), the Court said that "[t]he usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony" *Id.*, at 156. There in September 1921, officers had obtained probable cause to believe the two defendants were unlawfully transporting bootleg liquor, but they had neither effected an immediate arrest nor sought a warrant. Several

upon the lawful arrest of a person, he and the area under his immediate control may be searched and contraband or evidence seized without a warrant. The right "to search

months later they observed two men driving on a public highway, stopped and searched the car and arrested the men, and this Court sustained both the search and the arrest. So also in *Trupiano v. United States*, 334 U. S. 699 (1948), officers were amply forewarned of criminal activities and had time to seek a warrant but did not do so. Instead, some time later they entered on property where Trupiano had a still and found exactly what they expected to find—one of the defendants engaged in the distillation of bootleg liquor. His arrest without a warrant was sustained, the Court saying that "[t]he absence of a warrant of arrest, even though there was sufficient time to obtain one, [did] . . . not destroy the validity of an arrest" in the circumstances of the case. *Id.*, at 705.

The judgment of Congress also is that federal law enforcement officers may reasonably make warrantless arrests upon probable cause. It has authorized such arrests by United States Marshals, agents of the Federal Bureau of Investigation and of the Secret Service and narcotics law enforcement officers. See Act of June 15, 1935, c. 259, § 2, 49 Stat. 378, as amended, 18 U. S. C. § 3053; Act of June 18, 1934, c. 595, 48 Stat. 1008, as amended, 18 U. S. C. § 3052; Act of Sept. 29, 1965, 79 Stat. 890, as amended, 18 U. S. C. § 3056; Act of July 18, 1956, Tit. I, § 104 (a), 70 Stat. 570, as amended, 26 U. S. C. § 7607 (2). And, in 1951, Congress expressly deleted from the authority to make warrantless arrests a pre-existing statutory restriction barring them in the absence of a likelihood that the person would escape before a warrant could be obtained. See Act of Jan. 10, 1951, c. 1221, § 1, 64 Stat. 1239; S. Rep. No. 2464, 81st Cong., 2d Sess., 2 (1950); H. R. Rep. No. 3228, 81st Cong., 2d Sess., 2 (1950); *Chimel v. California*, 395 U. S. 752, 776-780 (1969) (dissenting opinion).

The majority now suggests that warrantless, probable cause arrests may not be made in the home absent exigent circumstances. *Jones v. United States*, 357 U. S. 493 (1958), invalidated a forceable nighttime entry to effect a search without a warrant and suggested also that the particular circumstances of the entry would have posed a serious Fourth Amendment issue if the purpose of the entry had been to make an arrest. But, as a constitutional matter, the Court has never held or intimated that all probable cause arrests without a warrant in the home must be justified by exigent

the person of the accused when legally arrested to discover and seize the fruits or evidences of crime . . . has been uniformly maintained in many cases." *Weeks v. United States*, 232 U. S. 383, 392 (1914). Accord, *Chimel v. California*, *supra*.

With respect to houses and other private places, the general rule is otherwise: a search is invalid unless made on probable cause and under the authority of a warrant specifying the area to be searched and the objects to be seized. There are various exceptions to the rule, however, permitting warrantless entries and limited searches, the most recurring being the arrest without a warrant.

The case before us concerns the protection offered by the Fourth Amendment to "effects" other than personal papers or documents. It is clear that effects may not be seized without probable cause but the law as to when a warrant is required to validate their seizure is confused and confusing. Part of the difficulty derives from the fact that effects enjoy derivative protection when located in a house or other area within reach of the Fourth Amendment. Under existing doctrine, effects seized in warrantless, illegal searches of houses are fruits of a constitutional violation and may not be received in evidence. But is a warrant required to seize contraband or crim-

circumstances other than the necessity for arresting a felon, or that, if the elapsed time between the accrual of probable cause and the making of the arrest proves sufficient to have obtained a warrant, the arrest is invalid. On the contrary, many cases in this Court have proceeded on the assumption that ordinarily warrantless arrests on probable cause may be effected even in the home. See *Sabbath v. United States*, 391 U. S. 585 (1968); *Miller v. United States*, 357 U. S. 301, 305-308 (1958); *United States v. Rabinowitz*, 339 U. S. 56, 60 (1950) (dictum); *Trupiano v. United States*, *supra*; *Johnson v. United States*, 333 U. S. 10, 15 (1948) (dictum). Of course, this is not to say that the time and method of entry could never pose serious constitutional questions under the Fourth Amendment.

inal evidence when it is found by officers at a place where they are legally entitled to be at the time? Before a person is deprived of his possession or right to possession of his effects, must a magistrate confirm that what the officer has legally seen (and would be permitted to testify about, if relevant and material) is actually contraband or criminal evidence?

The issue arises in different contexts. First, the effects may be found on public property. Suppose police are informed that important evidence has been secreted in a public park. A search is made and the evidence found. Although the evidence was hidden rather than abandoned, I had not thought a search warrant was required for officers to make a seizure, see *United States v. Lee*, 274 U. S. 559 (1927) (boat seized on public waters);² *Hester v. United States*, 265 U. S. 57 (1924) (liquor seized in open field); any more than a warrant is needed to seize an automobile which is itself evidence of crime and which is found on a public street or in a parking lot. See *Cooper v. California*, *supra*.

Second, the items may be found on the premises of a third party who gives consent for an official search but who has no authority to consent to seizure of another person's effects. *Frazier v. Cupp*, 394 U. S. 731 (1969), would seem to settle the validity of the seizure without a warrant as long as the search itself involves no Fourth Amendment violation.

Third, the police may arrest a suspect in his home and in the course of a properly limited search discover evidence of crime. The line of cases from *Weeks v. United States*, *supra*, to *Harris v. United States*, 331 U. S. 145 (1947), had recognized the rule that upon arrest searches of the person and of adjacent areas were

² *Lee* permitted the revenue officers who seized the boat to take and chemically analyze bootleg liquor found aboard it and then to testify as to the results of their analysis.

reasonable, and *Harris* had approved an incidental search of broad scope. In the next Term, however, *Trupiano v. United States*, *supra*, departed from the *Harris* approach. In *Trupiano*, officers, with probable cause to arrest, entered property and arrested the defendant while he was operating an illegal still. The still was seized. Time and circumstance would have permitted the officers to secure both arrest and search warrants, but they had obtained neither. The Court did not disturb seizure of the person without warrant but invalidated seizure of the still since the officers could have had a warrant but did not. *United States v. Rabinowitz*, *supra*, however, returned to the rule that the validity of searches incident to arrest does not depend on the practicability of securing a warrant. And, while *Chimel v. California*, *supra*, narrowed the permissible scope of incident searches to the person and the immediate area within reach of the defendant, it did not purport to re-establish the *Trupiano* rule that searches accompanying arrests are invalid if there is opportunity to get a warrant.

Finally, officers may be on a suspect's premises executing a search warrant and in the course of the authorized search discover evidence of crime not covered by the warrant. *Marron v. United States*, 275 U. S. 192 (1927), flatly held that legal presence under a warrant did not itself justify the seizure of such evidence. However, seizure of the same evidence was permitted because it was found in plain sight in the course of making an arrest and an accompanying search. It is at least odd to me to permit plain sight seizures arising in connection with warrantless arrests, as the long line of cases ending with *Chimel* have done, or arising in the course of a hot pursuit search for a felon, *Warden v. Hayden*, 387 U. S. 294 (1967); *Hester v. United States*, *supra*; and yet forbid the warrantless seizure of evidence

in plain sight when officers enter a house under a search warrant that is perfectly valid but does not cover the items actually seized. I have my doubts that this aspect of *Marron* can survive later cases in this Court, particularly *Zap v. United States*, 328 U. S. 624 (1946), vacated on other grounds, 330 U. S. 800 (1947), where federal investigators seized a cancelled check evidencing crime that had been observed during the course of an otherwise lawful search. See also *Stanley v. Georgia*, 394 U. S. 557, 569 (1969) (STEWART, J., concurring). Cf. *Chimel v. California*, *supra*; *Warden v. Hayden*, *supra*; *Frazier v. Cupp*, *supra*. Apparently the majority agrees, for it lumps plain sight seizures in such circumstances along with other situations where seizures are made after a legal entry.

In all of these situations, it is apparent that seizure of evidence without warrant is not itself an invasion either of personal privacy or of property rights beyond that already authorized by law. Only the possessory interest of a defendant in his effects is implicated. And in these various circumstances, at least where the discovery of evidence is "inadvertent," the Court would permit the seizure because, it is said, "the minor peril to Fourth Amendment protections" is overridden by the "major gain in effective law enforcement" inherent in avoiding the "needless inconvenience" of procuring a warrant. *Ante*, p. 23. I take this to mean that both the possessory interest of the defendant and the importance of having a magistrate confirm that what the officer saw with his own eyes is in fact contraband or evidence of crime are not substantial constitutional considerations. Officers in these circumstances need neither guard nor ignore the evidence while a warrant is sought. Immediate seizure is justified and reasonable under the Fourth Amendment.

The Court would interpose in some or all of these situations, however, a condition that the discovery of

the disputed evidence be "inadvertent." If it is "anticipated," that is if "the police know in advance the location of the evidence and intend to seize it," the seizure is invalid. *Id.*, at 26.

I have great difficulty with this approach. Let us suppose officers secure a warrant to search a house for a rifle. While staying well within the range of a rifle search, they discover two photographs of the murder victim, both in plain sight in the bedroom. Assume also that the discovery of the one photograph was inadvertent but finding the other was anticipated. The Court would permit the seizure of only one of the photographs. But in terms of the "minor" peril to Fourth Amendment values there is surely no difference between these two photographs: the interference with possession is the same in each case and the officers' appraisal of the photograph they expected to see is no less reliable than their judgment about the other. And in both situations the actual inconvenience and danger to evidence remains identical if the officers must depart and secure a warrant. The Court, however, states that the State will suffer no constitutionally cognizable inconvenience from invalidating anticipated seizures since it had probable cause to search for the items seized and could have included them in a warrant.

— This seems a punitive and extravagant application of the exclusionary rule. If the police have probable cause to search for a photograph as well as a rifle and they proceed to seek a warrant, they could have no possible motive for deliberately including the rifle but omitting the photograph. Quite the contrary is true. Only oversight or careless mistake would explain the omission in the warrant application if the police were convinced they had probable cause to search for the photograph. Of course, they may misjudge the facts and not realize they have probable cause for the picture, or the magistrate may find against them and not issue a warrant for it.

In either event the officers may validly seize the photograph for which they had no probable cause to search but the other photograph is excluded from evidence when the Court subsequently determines that the officers, after all, had probable cause to search for it.

More important, the inadvertence rule is unnecessary to further any Fourth Amendment ends and will accomplish nothing. Police with a warrant for a rifle may search only places where rifles might be and must terminate the search once the rifle is found; the inadvertence rule will in no way reduce the number of places into which they may lawfully look. So too the areas of permissible search incident to arrest are strictly circumscribed by *Chimel*. Excluding evidence seen from within those areas can hardly be effective to operate to prevent wider, unauthorized searches. If the police stray outside the scope of an authorized *Chimel* search they are already in violation of the Fourth Amendment, and evidence so seized will be excluded; adding a second reason for excluding evidence hardly seems worth the candle. Perhaps the Court is concerned that officers, having the right to intrude upon private property to make arrests, will use that right as a pretext to obtain entry to search for objects in plain sight, cf. *Chimel v. California*, *supra*, at 767, but, if so, such a concern is unfounded. The reason is that under *Chimel* the police can enter only into those portions of the property into which entry is necessary to effect the arrest. Given the restrictions of *Chimel*, the police face a substantial risk that in effecting an arrest and a search incident thereto they will never enter into those portions of the property from which they can plainly see the objects for which they are searching and that, if they do not, those objects will be destroyed before they can return and conduct a search of the entire premises pursuant to a warrant. If the police in fact possess probable cause to believe that weapons, contra-

band or evidence of crime is in plain view on the premises, it will be far safer to obtain a search warrant than to take a chance that in making an arrest they will come into plain view of the object they are seeking. It is only when they lack probable cause for a search—when, that is, discovery of objects in plain view from a lawful vantage point is inadvertent—that entry to make an arrest might, as a practical matter, assist the police in discovering an object for which they could not have obtained a warrant. But the majority in that circumstance would uphold their authority to seize what they see. I thus doubt that the Court's new rule will have any measurable effect on police conduct. It will merely attach undue consequences to what will most often be an unintended mistake or a misapprehension of some of this Court's probable cause decisions, a failing which, I am afraid, we all have.

By invalidating otherwise valid, plain sight seizures where officers have probable cause and presumably, although the Court does not say so, opportunity to secure a warrant, the Court seems to turn in the direction of the *Trupiano* rule, rejected in *Rabinowitz* and not revived in *Chimel*. But it seems unsure of its own rule.

It is careful to note that Coolidge's car is not contraband, stolen or in itself dangerous. Apparently, contraband, stolen or dangerous materials may be seized when discovered in the course of an otherwise authorized search even if the discovery is fully anticipated and a warrant could have been obtained. The distinction the Court draws between contraband and mere evidence of crime is reminiscent of the confusing and unworkable approach that I thought *Warden v. Hayden, supra*, had firmly put aside.

Neither does the Court in so many words limit *Chimel*; on the contrary, it indicates that warrantless *Chimel*-type searches will not be disturbed, even if the police

"anticipate that they will find specific evidence during the course of such a search." *Ante*, p. 37. The Court also concedes that, when an arresting officer "comes within plain view of a piece of evidence, not concealed, although outside of the area under the immediate control of the arrestee, the officer may seize it, so long as the plain view was obtained in the course of an appropriately limited search of the arrestee." *Id.*, at 21 n. 24. Yet today's decision is a limitation on *Chimel*, for in the latter example, the Court would permit seizure only if the plain view was inadvertently obtained. If the police, that is, fully anticipate that, when they arrest a suspect as he is entering the front door of his home, they will find a credit card in his pocket and a picture in plain sight on the wall opposite the door, both of which will implicate him in a crime, they may under today's decision seize the credit card but not the picture. This is a distinction which I find to be without basis and which the Court makes no attempt to explain. I can therefore conclude only that *Chimel* and today's holding are squarely inconsistent and that the Court, unable to perceive any reasoned distinction, has abandoned any attempt to find one.

The Court also fails to mention searches carried out with third party consent. Assume for the moment that authorities are reliably informed that a suspect, subject to arrest, but not yet apprehended, has concealed specified evidence of his crime in the house of a friend. The friend freely consents to a search of his house and accompanies the officers in the process. The evidence is found precisely where the officers were told they would find it, and the officers proceed to seize it, aware, however, that the friend lacks authority from the suspect to confer possession on them. The suspect's interest in not having his possession forcibly interfered with in the absence of a warrant from a magistrate is identical to

the interest of Coolidge, and one would accordingly expect the Court to deal with the question. *Frazier v. Cupp, supra*, indicates that a seizure in these circumstances would be lawful, and the Court today neither overrules nor distinguishes *Frazier*; in fact, Part III of the Court's opinion, which discusses the officers' receipt of Coolidge's clothing and weapons from Mrs. Coolidge, implicitly approves *Frazier*.

Neither does the Court indicate whether it would apply the inadvertence requirement to searches made in public places, although one might infer from its approval of *United States v. Lee, supra*, which held admissible a chemical analysis of bootleg liquor observed by revenue officers in plain sight, that it would not.

Aware of these inconsistencies, the Court admits that "it would be nonsense to pretend that our decision today reduces Fourth Amendment law to complete order and harmony." *Ante*, p. 38. But it concludes that logical consistency cannot be attained in constitutional law and ultimately comes to rest upon its belief "that the result reached in this case is correct. . . ." *Id.*, at 39. It may be that constitutional law cannot be fully coherent and that constitutional principles ought not always be spun out to their logical limits, but this does not mean that we should cease to strive for clarity and consistency of analysis. Here the Court has a ready opportunity, one way or another, to bring clarity and certainty to a body of law that lower courts and law enforcement officials often find confusing. Instead, without apparent reason, it only increases their confusion by clinging to distinctions that are both unexplained and inexplicable.

II

In the case before us, the officers had probable cause both to arrest Coolidge and to seize his car. In order to effect his arrest, they went to his home—perhaps the

most obvious place in which to look for him. They also may have hoped to find his car at home and, in fact, when they arrived on the property to make the arrest, they did find the 1951 Pontiac there. Thus, even assuming that the Fourth Amendment protects against warrantless seizures outside the house, but see *Hester v. United States*, *supra*, at 59, the fact remains that the officers had legally entered Coolidge's property to effect an arrest and that they seized the car only after they observed it in plain view before them. The Court, however, would invalidate this seizure on the premise that officers should not be permitted to seize effects in plain sight when they have anticipated they will see them.

Even accepting this premise of the Court, seizure of the car was not invalid. The majority makes an assumption that, when the police went to Coolidge's house to arrest him, they anticipated that they would also find the 1951 Pontiac there. In my own reading of the record, however, I have found no evidence to support this assumption. For all the record shows, the police, although they may have hoped to find the Pontiac at Coolidge's home, did not know its exact location when they went to make the arrest, and their observation of it in Coolidge's driveway was truly inadvertent. Of course, they did have probable cause to seize the car, and, if they had had a valid warrant as well, they would have been justified in looking for it in Coolidge's driveway—a likely place for it to be. But if the fact of probable cause bars this seizure, it would also bar seizures not only of cars found at a house, but also of cars parked in a parking lot, hidden in some secluded spot, or delivered to the police by a third party at the police station. This would simply be a rule that the existence of probable cause bars all warrantless seizures.

It is evident on the facts of this case that Coolidge's Pontiac was subject to seizure if proper procedures were

employed. It is also apparent that the Pontiac was in plain view of the officers who had legally entered Coolidge's property to effect his arrest. I am satisfied that it was properly seized whether or not the officers expected that it would be found where it was. And, since the Pontiac was legally seized as evidence of the crime for which Coolidge was arrested, *Cooper v. California, supra*, authorizes its warrantless search while in lawful custody of the police. "It would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it. It is no answer to say that the police could have obtained a search warrant, for '[t]he relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable.' . . . Under the circumstances of this case, we cannot hold unreasonable under the Fourth Amendment the examination or search of a car validly held by officers for use as evidence" *Cooper v. California, supra*, at 62.

III

Given the foregoing views, it is perhaps unnecessary to deal with the other grounds offered to sustain the search of Coolidge's car. Nonetheless, it may be helpful to explain my reasons for relying on the plain-sight rule rather than on *Chambers v. Maroney*, 399 U. S. 42 (1970), to validate this search.

Chambers upheld the seizure and subsequent search of automobiles at the station house rather than require the police to search cars immediately at the places where they are found. But *Chambers* did not authorize indefinite detention of automobiles so seized; it contemplated some expedition in completing the searches so that automobiles could be released and returned to their owners. In the present case, however, Coolidge's Pontiac was not released quickly but was retained in police

custody for more than a year and was searched not only immediately after seizure but also on two other occasions: one of them 11 months and the other 14 months after seizure. Since fruits of the later searches as well as the earlier one were apparently introduced in evidence, I cannot look to *Chambers* and would invalidate the later searches but for the fact that the police had a right to seize and detain the car not because it was a car, but because it was itself evidence of crime. It is only because of the long detention of the car that I find *Chambers* inapplicable, however, and I disagree strongly with the majority's reasoning for refusing to apply it.

As recounted earlier, arrest and search of the person on probable cause but without a warrant is the prevailing constitutional and legislative rule, without regard to whether on the particular facts there was opportunity to secure a warrant. Apparently, exigent circumstances are so often present in arrest situations that it has been deemed improvident to litigate the issue in every case.

In similar fashion, "practically since the beginning of the Government," Congress and the Court have recognized "a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practical to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Carroll v. United States*, *supra*, at 153. As in the case of an arrest and accompanying search of a person, searches of vehicles on probable cause but without a warrant have been deemed reasonable within the meaning of the Fourth Amendment without requiring proof of exigent circumstances beyond the fact that a movable vehicle is involved. The rule has been consistently recognized, see *Cooper v. Cali-*

foria, *supra*; *Brinegar v. United States*, 338 U. S. 160 (1949); *Harris v. United States*, *supra*, at 168 (dissenting opinion); *Davis v. United States*, 328 U. S. 582, 609 (1946) (dissenting opinion); *Scher v. United States*, 305 U. S. 251 (1938); *Husty v. United States*, 282 U. S. 694 (1931); *United States v. Lee*, *supra*; and was reaffirmed less than a year ago in *Chambers v. Maroney*, *supra*, where a vehicle was stopped on the highway but was searched at the police station, there being probable cause but no warrant.

The majority now approves warrantless searches of vehicles in motion when seized. On the other hand, warrantless, probable cause searches of parked but movable vehicles in some situations would be valid only upon proof of exigent circumstances justifying the search. Although I am not sure, it would seem that, when police discover a parked car that they have probable cause to search, they may not immediately search but must seek a warrant. But if before the warrant arrives, the car is put in motion by its owner or others, it may be stopped and searched on the spot or elsewhere. In the case before us, Coolidge's car, parked at his house, could not be searched without a valid warrant, although if Coolidge had been arrested as he drove away from his home, immediate seizure and subsequent search of the car would have been reasonable under the Fourth Amendment.

I find nothing in the language or the underlying rationale of the line of cases from *Carroll* to *Chambers* limiting vehicle searches as the Court now limits them in situations such as the one before us. Although each of those cases may, as the Court argues, have involved vehicles or vessels in motion prior to their being stopped and searched, each of them approved the search of a vehicle that was no longer moving and, with the occupants in custody, no more likely to move than the unattended but movable vehicle parked on the street or in the driveway of a person's house. In both situa-

tions the probability of movement at the instance of family or friends is equally real, and hence the result should be the same whether the car is at rest or in motion when it is discovered.

In *Husty v. United States*, *supra*, the police had learned from a reliable informant that Husty had two loads of liquor in automobiles of particular make and description parked at described locations. The officers found one of the cars parked and unattended at the indicated spot. Later, as officers watched, Husty and others entered and started to drive away. The car was stopped after having moved no more than a foot or two; immediate search of the car produced contraband. Husty was then arrested. The Court, in a unanimous opinion, sustained denial of a motion to suppress the fruits of the search, saying that "[t]he Fourth Amendment does not prohibit the search, without warrant, of an automobile for liquor illegally transported or possessed, if the search is upon probable cause" *Id.*, at 700. Further, "[t]he search was not unreasonable because, as petitioner argued, sufficient time elapsed between the receipt by the officer of the information and the search of the car to have enabled him to procure a search warrant. He could not know when Husty would come to the car or how soon it would be removed. In such circumstances we do not think the officers should be required to speculate upon the chances of successfully carrying out the search, after the delay and withdrawal from the scene of one or more officers which would have been necessary to procure a warrant. The search was, therefore, on probable cause, and not unreasonable" *Id.*, at 701.

The Court apparently cites *Husty* with approval as involving a car in motion on the highway. But it was obviously irrelevant to the Court that the officers could have obtained a warrant before Husty attempted to drive the car away. Equally immaterial was the fact

that the car had moved one or two feet at the time it was stopped. The search would have been approved even if it had occurred before Husty's arrival or after his arrival but before he had put the car in motion. The Court's attempt to distinguish *Husty* on the basis of the car's negligible movement prior to its being stopped is without force.

The Court states flatly, however, that this case is not ruled by the *Carroll-Chambers* line of cases but by *Dyke v. Taylor Implement Co.*, 391 U. S. 216 (1968). There the car was properly stopped and the occupants arrested for reckless driving, but the subsequent search at the station house could not be justified as incident to the arrest. See *Preston v. United States*, 376 U. S. 364 (1964). Nor could the car itself be seized and later searched, as it was, absent probable cause to believe it contained evidence of crime. In *Dyke*, it was pointed out that probable cause did not exist at the time of the search, and we expressly rested our holding on this fact, noting that, "[s]ince the search was not shown to have been based upon sufficient cause," it was not necessary to reach other grounds urged for invalidating it. 391 U. S., at 222. Given probable cause, however, we would have upheld the search in *Dyke*.

For Fourth Amendment purposes, the difference between a moving and movable vehicle is tenuous at best. It is a metaphysical distinction without roots in the commonsense standard of reasonableness governing search and seizure cases. Distinguishing the case before us from the *Carroll-Chambers* line of cases further enmeshes Fourth Amendment law in litigation breeding refinements having little relation to reality. I suggest that in the interest of coherence and credibility we either overrule our prior cases and treat automobiles precisely as we do houses or apply those cases to readily movable as well as moving vehicles and thus treat searches of automobiles

as we do the arrest of a person. By either course we might bring some modicum of certainty to Fourth Amendment law and give the law enforcement officers some slight guidance in how they are to conduct themselves.

I accordingly dissent from Parts II-B, II-C, and II-D of the Court's opinion. I concur, however, in the result reached in Part III of the opinion. I would therefore affirm the judgment of the New Hampshire Supreme Court.